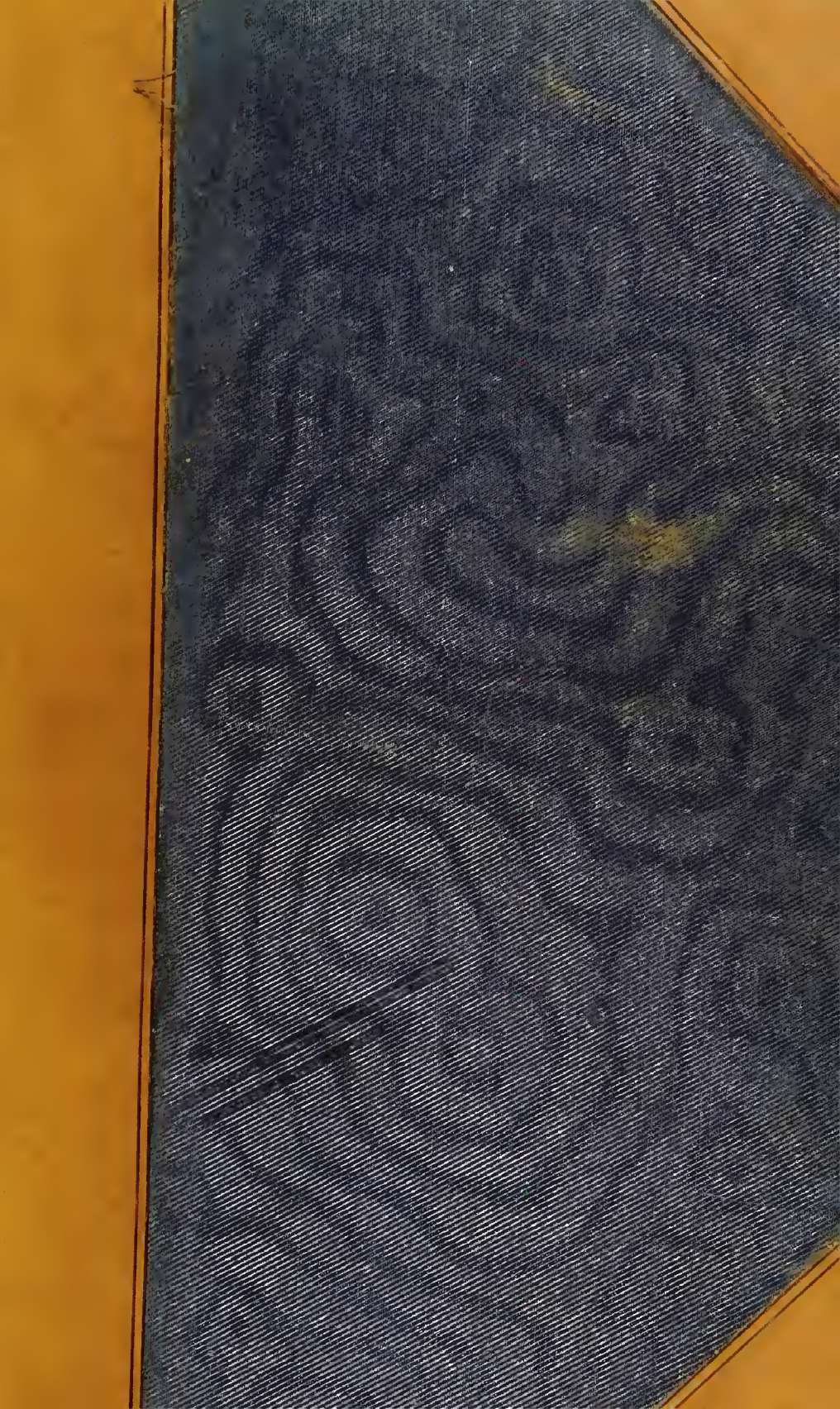

A DIGEST

OF

ALL THE REPORTED CASES

DECIDED UNDER THE

BANKRUPTCY ACT, 1883,

WITH

REFERENCES TO ALL THE REPORTS,

AND TO THE

COURTS IN WHICH THE VARIOUS DECISIONS HAVE BEEN GIVEN.

COMPILED BY

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LONDON:

H. SWEET & SONS, 3, CHANCERY LANE,

Law Publishers.

1888.

LONDON:
BRADBURY, AGNEW, & CO., PRINTERS, WHITEFRIARS.

PREFACE.

THE present digest was undertaken in response to numerous requests from subscribers to "Morrell's Bankruptcy Reports." It was felt, however, that if all the cases wherever reported under the present Bankruptcy Act were included, and references added to all the contemporary reports, the general usefulness of the work would be very materially increased. In spite of very careful revision, it is much to be feared that in a book depending so entirely upon correctness of reference some inaccuracies may unfortunately be discovered. For these the Editor can only ask indulgence, and he has no higher hope than that the present work may be accepted in the same kindly spirit as that in which during the past four years his "Reports" have been received by all branches of the profession.

4, ESSEX COURT, TEMPLE, E.C.
January, 1888.

TABLE OF CASES.

NOTE AND ADDENDA.

In the case of *In re Scharrer, Ex parte Tilly* (C. A., January 27th), which was an appeal by the trustee in the bankruptcy from the refusal of the registrar to direct a witness to answer certain questions, the case of *In re Purvis, Ex parte Rooke* (see pp. 77, 162) was referred to. The Master of the Rolls (Lord Esher), in the course of his judgment said, "... In the course of the argument something was said with regard to the difficulty the registrars had in respect of the case of *In re Purvis*. It was said to be open to this construction—that Mr. Justice Cave there decided that the registrar was bound to accept the first answer given by the witness, and the witness could not be asked any question as to his credit. Now I have spoken to Mr. Justice Cave and he is astonished at such an interpretation. What he meant to say was, that in the end the answers of the witness must be taken—that is witnesses could not be called to contradict him; but the witness may be cross-examined. I am authorized to give that explanation of *In re Purvis*, and on that construction the case does not appear to present the difficulties which the registrars have adopted on it . . ." See the *Times* newspaper, January 28th, 1888. *Solicitors' Journal*, February 4th, 1888, p. 222.

Pp. 7, 58. *In re Crowther, Ex parte Ellis*, add also 57 L. J. Q. B. 57.

Pp. 39, 64. *In re Morley, Scott* v. *Morley*, add also 57 L. J. Q. B. 43.

P. 63. *In re Easy, Ex parte Hill & Hymans*, add also 56 L. J. Q. B. 624.

DIGEST OF CASES

DECIDED UNDER THE

BANKRUPTCY ACT, 1883.

ABUSE OF PROCESS.

The Court will not allow its process to be used to do indirectly that which the process of the Court will not allow to be done directly. Thus where application was made by a friendly creditor for discovery of documents, nominally for the purpose of carrying out proceedings to expunge a proof, but in reality for the purpose of reopening, after time for appeal had elapsed, the question as to whether the receiving order had been properly made against the bankrupt or not.

Held: That the application was an attempt by the contrivance of the creditor and the bankrupt, in the interest of the bankrupt, to use the process of the Court to do that which if the bankrupt himself asked the Court, the Court would not allow to be done; and that the Registrar was quite right in refusing it. *In re Dashwood, Ex parte Kirk*, 3 Morrell, 257—C. A.

ACT OF BANKRUPTCY.

Proof of.]—If, on the hearing of a bankruptcy petition, the act of bankruptcy alleged is not strictly proved, but the debtor appears and does not raise the objection, and a receiving order is made, he cannot, on an appeal from that order, raise the objection. *In re Pratt, Ex parte Pratt*, 1 Morrell, 27; L. R. 12 Q. B. D. 334; 53 L. J. Ch. 613; 50 L. T. 294; 32 W. R. 420—C. A.

Act of Bankruptcy before January 1st, 1884.]—Where a debtor had committed an act of bankruptcy under the Bankruptcy Act, 1869, and no proceedings in bankruptcy had been taken against him prior to January 1st, 1884, when the Bankruptcy Act, 1883, came into operation, pro-

ceedings in bankruptcy under the Bankruptcy Act, 1883, might be taken against such debtor founded on the act of bankruptcy previously committed. Where proceedings in liquidation were pending on January 1st, 1884, which afterwards came to an end, proceedings to obtain an adjudication against a debtor founded on the act of bankruptcy committed by him by filing the liquidation petition might be taken under the Bankruptcy Act, 1883. *In re Pratt, Ex parte Pratt*, 1 Morrell, 27 : L. R. 12 Q. B. D. 334; 53 L. J. Ch. 613; 50 L. T. 294; 32 W. R. 420—C. A.

Execution of Deed of Assignment.]—On August 20th, 1885, in accordance with a resolution passed at a meeting of creditors, the debtor executed a deed of assignment vesting his estate in a trustee for their benefit. On October 28th, 1885, a bankruptcy petition was presented against the debtor, the act of bankruptcy alleged being the execution of the deed of assignment. On October 31st, 1885, the trustee under the deed paid out of assets in his hands the sum of 20*l.* 7*s.* 8*d.* to a firm of solicitors, being the amount of their bill of costs incurred in connection with the meeting of creditors and in preparing the deed of assignment, and also in collecting certain book debts. On January 20th, 1886, a receiving order was made against the debtor, and the trustee under the deed sent to the official receiver the balance of assets in his hands after deducting the amount so paid to the solicitors together with an account of receipts and payments in connection with the estate. The trustee appointed in the bankruptcy applied for an order for payment of the 20*l.* 7*s.* 8*d.*

Held: That the application must be granted; but that certain items for collecting book debts, amounting together to 2*l.*, would, under the circumstances, be allowed, and an order made for payment of 18*l.* 7*s.* 8*d.* *In re Forster, Ex parte Rawlings*, 4 Morrell, 292; 36 W. R. 144—Cave, J.

——A debtor, on August 28th, 1884, on being pressed by a creditor, who had obtained judgment, for payment of the debt due to him, gave to an auctioneer, who was about to sell the farming stock of such debtor, a document by which he authorized and requested him to pay to such creditor, after deducting any rent which might be due to the landlord, the debt due to him out of the first proceeds of the sale, and appropriated the sum necessary to pay the debt out of the proceeds of the sale for the purposes of the payment. On October 22nd, 1884, a receiving order was made against the debtor, and the sum so appropriated was subsequently claimed by the official receiver as trustee in the bankruptcy on the grounds (1) That the document was an assignment of the whole of the

debtor's property, and as such amounted to an act of bankruptcy; (2) That it was a fraudulent preference.

Held: That under the circumstances of the case the document in question did not amount to an assignment of the whole of the debtor's property.

That the principal motive of the debtor was not to favour the creditor, and that the transaction did not constitute a fraudulent preference.

That the official receiver as trustee having come to the Court was in the same position as an ordinary litigant, and being unsuccessful must pay the costs. *In re Glanville, Ex parte the Trustee,* 2 Morrell, 71; 33 W. R. 523—Cave, J.

——Where a deed of assignment of the whole of their property executed by the debtors for the benefit of their creditors generally contained a provision for the payment out of the assets in the first instance of the costs and expenses of the trustee under the said deed of assignment, such trustee was not entitled (on the debtors being adjudged bankrupt upon a petition founded on the deed as an act of bankruptcy) to retain as against the trustee in the bankruptcy assets in his hands, on the ground that a sum exceeding the said assets was due to him for work and labour done. *In re J. J. and H. Richards, Ex parte The Official Receiver,* 1 Morrell, 242; 32 W. R. 1001—Wills, J.

——Where a debtor has assigned the whole of his property to a trustee for the benefit of his creditors generally, and such trustee has taken possession of the property and carried on the debtor's business, in the event of the debtor subsequently being adjudged bankrupt on a petition founded on the act of bankruptcy committed by the execution of the deed of assignment, the trustee in the bankruptcy must elect to treat the trustee under the deed either as his agent or as a trespasser. If the trustee in the bankruptcy elects to treat the trustee under the deed as a trespasser, he can only claim from him any property of the bankrupt which remains in his possession unconverted, and the value, at the time when he took possession, of any property which he has taken possession of and has converted. *In re Riddeough, Ex parte Vaughan,* 1 Morrell, 258; L. R. 14 Q. B. D. 25; 33 W. R. 151—D.

Failure to comply with Bankruptcy Notice—Appeal from Judgment—Stay of Proceedings.]—Where a bankruptcy petition is presented by a creditor founded on an act of bankruptcy committed by the failure of the debtor to comply with the terms of a bankruptcy notice to pay a judgment debt, and an appeal is pending from such judgment, it is a matter of

discretion for the Registrar whether he will make a receiving order, or stay the proceedings, and the Court of Appeal will not interfere unless such exercise of discretion is clearly wrong. *In re Rhodes, Ex parte Heyworth*, 1 Morrell, 269; L. R. 14 Q. B. D. 49; 54 L. J. Q. B. 198; 52 L. T. 201—C. A.

Bankruptcy Notice—Creditor entitled to Petition.]—Where by failing to comply with the terms of a bankruptcy notice a debtor has committed an act of bankruptcy under sect. 4, sub-s. 1 (g), of the Bankruptcy Act. 1883, any creditor may avail himself of such act of bankruptcy for the purpose of presenting a petition, and the right to present a petition is not limited to that creditor by whom the bankruptcy notice has been served. *In re Hastings, Ex parte Dearle*, 1 Morrell, 281; L. R. 14 Q. B. D. 184; 54 L. J. Q. B. 74; 33 W. R. 440—C. A.

Departing from Dwelling-house.]—On March 8th, 1887, the debtor, who was a farmer, instructed an auctioneer to sell off all the stock, furniture, and effects on his farms, and handbills and posters advertising the sale to take place on March 16th and 18th were issued, in which it was stated that the said debtor was leaving the neigbourhood. On March 15th, 1887, certain creditors, at whose bank the debtor had overdrawn his account, having heard of the sale, wrote to the debtor thereon, and on the same day he was served with a writ by another creditor. On March, 16th, 1887, the debtor departed from his house but left his brother at the farm, who superintended the conduct of the sale, and informed the auctioneer that letters addressed to him would reach the debtor. On March 17th, 1887, the debtor wrote to the bank, stating that he would call on the following Saturday or Monday and explain matters, which he did not do, and a petition was subsequently presented against him by the bank in the County Court, the act of bankruptcy alleged being that the said debtor departed from his dwelling-house with intent to defeat or delay his creditors, within section 4, sub-section 1 (*d*) of the Bankruptcy Act, 1883, but the County Court Judge declined to make a receiving order.

Held (on appeal): That the debtor was not bound to stay on his property while it was being sold from under him: that he left a representative in the person of his brother, and no evidence had been adduced to show that if inquiries had been made as to the debtor they would not have been answered: and that the County Court Judge, after hearing an explanation of the facts and considering the demeanour of the debtor when before him, having come to the conclusion that there was no intention to defeat the creditors, the Court would not interfere with his

decision. *In re Woolstenholme, Ex parte Foster & Co.*, 4 Morrell, 258 —D.

Remaining out of England.]—In January, 1886, the debtor, whose business was largely connected with Central America, called on his bankers informing them that he was about to visit that country, and obtained from them an advance of 2,000*l.* The money was not repaid, and in July, 1886, a circular was sent to the creditors by the solicitors of the debtor stating that he was in difficulties and calling a meeting in order that their wishes might be ascertained. After some difference of opinion it was finally resolved by a committee appointed for that purpose, that the debtor should be requested to stay in America in order to realise his assets there, and a telegram was thereupon sent to him by his solicitors to that effect. The committee still continued to meet, but no communications having arrived from the debtor, and his solicitors having declined to accept service of a writ, while it was ascertained that the debtor's London office had been closed, the bank in September, 1886, presented a bankruptcy petition.

Held: That the object with which the creditors accorded permission to the debtor to remain in America was in order that he might realise his assets: that the conduct of the debtor in not communicating with the creditors, and also in respect of the non-acceptance of service of the writ, together with other attendant circumstances, afforded ample evidence of an intention to stay abroad for the purpose of defeating his creditors within the meaning of section 4, sub-section 1 (*d*) of the Bankruptcy Act, 1883; and that the Court would have neglected its duty if it had refused to make a receiving order. *In re Campbell, Ex parte Campbell*, 4 Morrell, 198—D.

Notice of Suspension—Verbal Notice.]—A notice given by a debtor under section 4, sub-section 1 (h), that he has suspended, or that he is about to suspend, payment of his debts, need not, in order to constitute an act of bankruptcy, be necessarily given in writing. *In re Walker & Son, Ex parte Nickoll & Knight*, 1 Morrell, 188; L. R. 13 Q. B. D. 469—D.

Notice must be Formal.]—Where a verbal statement was made by a debtor to one of his creditors that he was unable to pay his debts in full, such statement did not amount to a notice by the debtor "that he has suspended, or that he is about to suspend, payment of his debts," so as to constitute an act of bankruptcy under section 4, sub-section 1 (h), of the Bankruptcy Act, 1883. Although such notice need not, in order to constitute an act of bankruptcy, be necessarily given in writing, still if it is given verbally it must be a formal notice, and given with the intention

of giving such notice. *In re Friedlander, Ex parte Oastler & Co.*, 1 Morrell, 207; L. R. 13 Q. B. D. 471; 54 L. J. Q. B. 23; 51 L. T. 309; 33 W. R. 126—C. A.

The fact that a debtor called a meeting of his creditors at which he laid before them his position, and made an offer of 6*s.* 8*d.* in the pound, did not amount to a notice by such debtor "that he has suspended, or that he is about to suspend payment of his debts," so as to constitute an act of bankruptcy under section 4, sub-section 1 (h), of the Bankruptcy Act, 1883. *In re Walsh, Ex parte the Trustee*, 2 Morrell, 112; 52 L. T. 694—D.

Where two circulars were sent out by the solicitors of the debtor to the creditors, calling a meeting of the creditors, and laying before them the position of the debtor, and further stating that by the kindness of friends, and by raising money upon his furniture, such debtor might be enabled to pay 10*s.* in the pound, provided all the creditors would accept it to save bankruptcy proceedings, but that if all the creditors would not agree, there was no alternative but to seek the protection of the Court.

Held: That such statements amounted to a notice by the debtor "that he has suspended, or that he is about to suspend payment of his debts," so as to constitute an act of bankruptcy under section 4, sub-section 1 (h), of the Bankruptcy Act, 1883. *In re Wolstenholme, Ex parte Wolstenholme*, 2 Morrell, 213—D.

In considering the question whether a statement made by a debtor to any of his creditors amounts to a notice that "he has suspended, or that he is about to suspend payment of his debts" within section 4, sub-section 1 (*h*) of the Bankruptcy Act, 1883, it is necessary in each case to estimate the reasonable construction which those persons who receive such statement of the debtor would, under the circumstances of the debtor's case, have a right to assume to be his meaning as to what he intends to do with respect to paying or suspending payment. Where the language of the debtor can only lead his creditors to infer that if an offer of a composition made by him is not accepted suspension is the only alternative, such statement will amount to a notice within the section. Thus, where a circular was sent out by a firm of accountants, acting on behalf of the debtor, to the creditors, laying before them the position of the debtor, and making an offer of 5*s.* in the pound, and further stating that such debtor had no other property, and that it was not his intention to go again into business.

Held: That from the circumstances of the case suspension was the only alternative offered; and that the statements in question amounted

to a notice by the debtor that he was about to suspend payment, so as to constitute an act of bankruptcy under the section. *In re Lamb, Ex parte Gibson & Bolland,* 4 Morrell, 25—C. A.

Computation of Time.]—In computing the three months within which, under section 6, sub-section 1 (*c*) of the Bankruptcy Act, 1883, the act of bankruptcy on which a petition is grounded must have occurred, the day on which such petition is presented is to be excluded. The act of bankruptcy was committed on August 13th, 1886, and the petition was filed on November 13th, 1886.

Held: That such petition was presented in time. *In re Hanson, Ex parte Foster,* 4 Morrell, 98; 56 L. T. 573; 35 W. R. 456—D.

ADMINISTRATION OF ESTATE OF DECEASED INSOLVENT.

Practice of Court.]—The Court of Bankruptcy, in administering the estate of a person dying insolvent under section 125 of the Bankruptcy Act, 1883, will follow the practice of the Chancery Division of the High Court in administration actions; and the County Court in Bankruptcy has in such case no jurisdiction to make an order against a stranger to pay over money, which the Chancery Division of the High Court would not make in an administration action. *In re Crowther, Ex parte Ellis,* 4 Morrell, 305; L. R. 20 Q. B. D. 38; 36 W. R. 189—D.

Section 47 not Applicable.]—Section 47 of the Bankruptcy Act, 1883, which deals with the avoidance of voluntary settlements, does not apply where the estate of a person dying insolvent is being administered in bankruptcy under section 125 of the Act. *In re Gould, Ex parte Chief Official Receiver,* 4 Morrell, 202; L. R. 19 Q. B. D. 92; 56 L. J. Q. B. 333; 56 L. T. 806; 35 W. R. 569—C. A.

Discovery—Order for Examination of Witnesses.]—Where an order of commitment was made against the widow and son of a deceased debtor whose estate was being administered in bankruptcy under the provisions of section 125 of the Bankruptcy Act, 1883, on the ground that they had refused to comply with an order of the County Court directing them to attend for the purpose of being examined with regard to the estate of such deceased debtor under section 27 of the Act.

Held: That section 27 of the Bankruptcy Act, 1883, does not apply to section 125 of the Act: that the powers under Order XXXVII., Rule 5 of the Supreme Court Rules, 1883, as to the examination of witnesses only exist where some litigation is in progress: and that Rule 58 of the Bankruptcy Rules, 1883, did not give any such power as was sought

for in the present case. *In re Hewitt, Ex parte Hewitt,* 2 Morrell, 184; L. R. 15 Q. B. D. 159; 54 L. J. Q. B. 402; 53 L. T. 156—D.

Transfer of Proceedings.]—Where an order has been made under sub-section (4) of section 125 of the Bankruptcy Act, 1883, transferring proceedings for the administration of a deceased debtor's estate from the Chancery Division of the High Court to the Court exercising jurisdiction in bankruptcy, the latter Court may make an administration order on an *ex parte* application by a creditor. But such order cannot be made until the expiration of two months from the date of the grant of probate or of letters of administration, unless either the legal personal representative of the deceased debtor consents thereto, or unless such debtor has committed an act of bankruptcy within three months prior to his decease. *In re May, Ex parte May,* 1 Morrell, 232; L. R. 13 Q. B. D. 552—D.

——Where a testator having previously carried on business in England, was for more than six months previous to his death an inmate of a lunatic asylum in Scotland, and died insolvent, and an administration action was commenced by a creditor; on motion on behalf of the plaintiff.

Held: That the Court had jurisdiction under sub-section (4) of section 125 of the Bankruptcy Act, 1883, to make an order transferring the proceedings to the County Court within the jurisdiction of which the testator formerly carried on his business. *Senhouse* v. *Mawson,* 52 L. T. 745—V.-C. B.

——The power given by section 125 of the Bankruptcy Act, 1883, to transfer the proceedings in an action brought for the administration of an insolvent estate to the Court of Bankruptcy, is a discretionary one, and it will not be exercised where the estate is small, the number of creditors is small, and considerable expense has been already incurred in chambers in proceedings under an administration judgment: — *Semble,* that an application for transfer can only be made by a creditor who has absolutely proved his debt. *In re Weaver, Higgs* v. *Weaver,* L. R. 29 Ch. Div. 236; 54 L. J. Ch. 749; 52 L. T. 512; 33 W. R. 874—Pearson, J.

ADVERTISEMENT.

Service of Petition by.]—On appeal from an order directing that publication of a notice in the *London Gazette,* and in the *Times* newspaper, should be deemed to be good service of a bankruptcy petition upon the debtor.

Held: That under Rule 154 and Form 16 of the Bankruptcy Rules,

1866, the Registrar, on being satisfied that the debtor was avoiding personal service, had perfect right to make the order in question; and that upon the facts of the case there was no ground for the appeal. *In re Collinson, Ex parte Collinson*, 4 Morrell, 161—C. A.

AFFIDAVIT.

Motion to Commit.—Affidavit of Service—Substituted Service].—The motion to commit should refer to the affidavit of service. And in order to obtain an order for substituted service, it must be shown that the person sought to be served knows of the motion, and is intentionally keeping out of the way. *In re Pearce, Ex parte the Board of Trade*, 1 Morrell, 111, 135—Cave, J.

——Where a party desires to enforce by commitment in the High Court a judgment of a competent court, he need not file an affidavit in denial of satisfaction. *In re Stone, Ex parte Nicholson*, 1 Morrell, 177—Cave, J.

Affidavit sworn Abroad—Evidence.]—When an affidavit or proof in bankruptcy is sworn abroad before a British consul, or vice-consul, a notarial certificate in verification of the signature and qualification of the consul, or vice-consul, is not required. The notarial certificate is only required when such an affidavit or proof is sworn before a foreign functionary. *In re Magee, Ex parte Magee*, L. R. 15 Q. B. D. 332; 54 L. J. Q. B. 394; 33 W. R. 655—Cave, J.

Stamp to.]—Where no estate has come into the hands of a trustee under a scheme of arrangement, such trustee must himself provide the stamp necessary to be affixed to the affidavit of no receipts required to be forwarded to the Board of Trade under Rule 291 of the Bankruptcy Rules, 1886. In such case an unstamped affidavit cannot be accepted, nor the amount necessary for the said stamp provided from the Bankruptcy Estates' Account. *In re Rowlands, Ex parte the Board of Trade*, 4 Morrell 70; 35 W. R. 457—Cave, J.

AGISTMENT.

Where a cattle dealer placed certain stock on the lands of a farmer upon an agreement whereby such stock remained the property of the dealer, who at the end of the fixed period was to sell the stock, and, after deducting the original price together with a percentage for profit, was to hand over the balance to the farmer: and during the continuance of the agreement the farmer became bankrupt, whereupon the trustee in the bankruptcy claimed the stock in question as being in the reputed owner-

ship of the bankrupt within section 44, sub-section (iii.), of the Bankruptcy Act, 1883.

Held: That the custom of agistment was notorious, and one which the ordinary creditors of the bankrupt might reasonably be presumed to have known: and that such being the case no reputation of ownership could arise with respect to the stock upon the lands of a farmer. *In re Woodward, Ex parte Huggins*, 3 Morrell, 75; 54 L. T. 683—D.

AGRICULTURAL HOLDINGS ACT.

The rent of a certain holding was by the lease payable at Midsummer; but by the ordinary course of dealing between the landlord and tenant, payment was deferred until September. Between Midsummer, 1886, and the usual time for payment, the landlord distrained for the rent for 1886, and also for the arrears of rent for 1885.

Held: That the landlord was entitled so to distrain: that section 44 of the Agricultural Holdings Act, 1883, does not say that a landlord shall not distrain for more than a year's rent at a time, but that such landlord shall not distrain for rent which is more than twelve months old; and that by the proviso in the section the rent for 1885 must be deemed to have become due at the usual day of payment, and therefore not to have been due for more than a year before the distress, so that it could be distrained for as well as the rent for 1886. *In re Bew, Ex parte Bull*, 4 Morrell, 94; L. R. 18 Q. B. D. 643; 56 L. J. Q. B. 270; 56 L. T. 571; 35 W. R. 455—D.

ALIMONY.

Proof for.]—Where an order is made by the Divorce Court for the future payment of alimony by a husband under the statute 29 & 30 Vict. c. 32, s. 1, such payments are not capable of valuation, and cannot therefore be proved for in the event of the husband being adjudicated bankrupt, but such husband is liable to continue the payments notwithstanding the bankruptcy. *In re Linton, Ex parte Linton*, 2 Morrell, 179; L. R. 15 Q. B. D. 239; 54 L. J. Q. B. 539; 52 L. T. 782; 33 W. R. 714; 49 J. P. 597—C. A.

ALLOWANCE.

A compassionate allowance granted to a retired Indian officer by the Secretary of State for India under the powers conferred on him by the Government of India Act, 1858—which said allowance is not provided for in the regulations of the service, and the granting of it does not form one of the terms upon which the service was originally entered upon, but

is a mere act of grace—does not fall within the words of section 53, sub-section (2) of the Bankruptcy Act, 1883, and the Court will not make an order under that section directing a certain sum to be paid thereout to the trustee in the bankruptcy of such officer for the purpose of distribution amongst his creditors. In order that section 53 may apply, the payment must be one to which the bankrupt has a legal or equitable claim. *In re Webber, Ex parte Webber*, 3 Morrell, 288; L. R. 18 Q. B. D. 111; 56 L. J. Q. B. 209; 55 L. T. 816; 35 W. R. 308—D.

AMENDMENT OF PROOF.—See *Proof.*

APPEAL.

To what Court.]—All appeals from decisions of the High Court of Justice in bankruptcy matters, whether given in Court or Chambers, lie to her Majesty's Court of Appeal, and not to a Divisional Court of the High Court. *Ex parte Oastler, In re Friedlander*, 51 L. T. 309—C. A.

On Special Case.]—An appeal lies direct to the Court of Appeal from the decision of the Judge in Bankruptcy upon a Special Case stated under section 97, sub-section (3), of the Bankruptcy Act, 1883, by the Judge of a County Court for the opinion of the High Court. *In re Moon, Ex parte Dawes*, 3 Morrell, 105; L. R. 17 Q. B. D. 275; 55 L. T. 114; 34 W. R. 752—C. A.

Under Debtors Act, 1869.]—By reason of the provisions of sections 103 and 104 of the Bankruptcy Act, 1883, an appeal from an order of the Judge to whom bankruptcy business is assigned upon an application under section 5 of the Debtors Act, 1869, will now lie directly to the Court of Appeal, and not as formerly to a Divisional Court. *In re Lascelles, Ex parte Genese*, 1 Morrell, 183; 53 L. J. Q. B. 578; 32 W. R. 794—D.

From Divisional Court—Leave.]—An application for leave to appeal under section 2 of the Bankruptcy Appeals (County Court) Act, 1884, from the decision of a Divisional Court sitting as a Court of Appeal from a County Court in bankruptcy, should be made in the first instance to a Divisional Court. Such application for leave to appeal ought to be made to the Divisional Court immediately after such Divisional Court has pronounced its decision. *In re Walker & Son, Ex parte Nicholl & Knight*, 1 Morrell, 249—C. A.

From Registrar.]—Where on the refusal of an application by the Registrar, application was subsequently made to the Judge sitting in bankruptcy to review the decision.

Held: That there was no power to accede to the request, and that in the event of the Registrar declining to review his own decision, the proper course was by way of appeal to the Court of Appeal. *In re Moore*, 2 Morrell, 78—Cave, J.

From Order of Committal.]—The Judge of a County Court not having jurisdiction in bankruptcy made an order of committal against the appellant upon a judgment summons under section 5 of the Debtors Act, 1869. The judgment summons having by mistake been marked with the words "In bankruptcy," an appeal was brought to the Divisional Court.

Held: That no appeal could lie from the order complained of, at any rate to the Divisional Court in Bankruptcy.

Quære: Whether any appeal lies from a committal in the County Court under section 5. *In re Watkins, Ex parte Watkins*, 3 Morrell, 146—D.

Leave to Appeal—Reasons for Refusing or Permitting.]—The jurisdiction of refusing or permitting an appeal is a very delicate jurisdiction, but where a question is one of principle and has been decided for the first time, it is not a sufficient reason for refusing leave to appeal because a Judge is himself of opinion that he has given a right decision. *In re Armstrong, Ex parte Armstrong*, 3 Morrell, 193; L. R. 17 Q. B. D. 521; 55 L. J. Q. B. 578; 55 L. T. 538; 34 W. R. 709—C. A.

Leave to Appeal—When Granted.]—Where the sum at stake is not large, and the Court entertains no doubt as to the principle involved, leave to appeal to the Court of Appeal will not be given. *In re Campbell, Ex parte Wolverhampton Banking Co.*, L. R. 14 Q. B. D. 32—D.

From County Court.]—In granting leave to appeal a County Court Judge ought not to limit or qualify his leave to appeal. *In re Sandars, Ex parte Serjeant*, 52 L. T. 516—D.

Bankruptcy Notice—Appeal pending from Judgment—Stay of Proceedings—Discretion of Registrar.]—Where a bankruptcy petition is presented by a creditor founded on an act of bankruptcy committed by the failure of a debtor to comply with the terms of a bankruptcy notice to pay a judgment debt, and an appeal is pending from such judgment, it is a matter of discretion for the Registrar whether he will make a receiving order or stay the proceedings, and the Court of Appeal will not interfere unless such exercise of discretion is clearly wrong. *In re Rhodes, Ex parte Heyworth*, 1 Morrell, 269; L. R. 14 Q. B. D. 49; 54 L. J. Q. B. 198; 52 L. T. 201—C. A.

Notice of sent by Post.]—*Quære:* Whether, where notice of appeal is sent by post in accordance with the provisions of section 142 of the Bankruptcy Act, 1883, such notice will be in time, unless the letter is received by the respondent before the expiration of the twenty-one days during which the appeal may be brought. *In re Arden, Ex parte Arden*, 2 Morrell, 1; L. R. 14 Q. B. D. 121; 51 L. T. 712; 33 W. R. 460—D.

Notice of to Official Receiver.]—Where after a receiving order has been made against a debtor on a bankruptcy notice, the petitioning creditor is settled with, and with his assent the debtor appeals for the purpose of having the receiving order set aside, it would appear that notice should be given to the official receiver, and where this was not done the Court discharged the receiving order as prayed, but directed that the order should not be drawn up for four days, and notice be given to the official receiver so as to enable him to come forward if he thought fit. *In re Fletcher, Ex parte Fletcher*, 4 Morrell, 113—D.

Who may Appeal.]—An unpaid creditor is a "person aggrieved" within the meaning of section 104, sub-section (2) of the Bankruptcy Act, 1883, by the granting of an order of discharge to a bankrupt, and as such has a right of appeal against such order. *In re Payne, Ex parte Castle Mail Packet Co.*, 3 Morrell, 270; L. R. 18 Q. B. D. 154; 56 L. J. Q. B. 625; 35 W. R. 89—C. A.

——The official receiver has *locus standi* to appeal to the Court of Appeal from the refusal of the Registrar forthwith to adjudge a debtor bankrupt on application made by him for that purpose under Rule 191 of the Bankruptcy Rules, 1886. *In re Reed, Bowen & Co., Ex parte the Chief Official Receiver*, 4 Morrell, 225; L. R. 19 Q. B. D. 174; 56 L. J. Q. B. 447; 56 L. T. 876; 35 W. R. 660—C. A.

——Rule 237 of the Bankruptcy Rules, 1886, is not *ultra vires*, but is a rule for carrying into effect the objects of the Bankruptcy Act, 1883; and the Board of Trade are entitled under that rule to appeal from any order of the Court made upon an application by a bankrupt for his discharge. *In re Stainton, Ex parte the Board of Trade*, 4 Morrell, 242; L. R. 19 Q. B. D. 182; 57 L. T. 202; 35 W. R. 667—D.

——Where a trustee in a liquidation applied to the Court for directions as to the acceptance of an offer for the purchase of the debtors' property, and notice was given to the debtors, but at the hearing of the application the County Court Judge refused to hear the solicitor for the debtors or to receive evidence on their behalf.

Held: That notice having been given to the debtors they ought to have been heard; and that an appeal lay from such refusal of the County Court Judge to do so.

Quære: Whether when a trustee applies to the Court for directions in any particular matter the debtor is in any event entitled to appear and be heard. *In re Webb & Sons, Ex parte Webb & Sons*, 4 Morrell, 52—Cave, J.

Limitation of Right of.]—Upon appeal from the decision of the Divisional Court in bankruptcy, dismissing a County Court appeal on the ground that the money or money's worth involved did not amount to 50*l.*, and that no leave to appeal had been obtained, the objection was taken that Rule 111 (2) of the Bankruptcy Rules, 1883 (see Rule 129 (2) Bankruptcy Rules, 1886), by which the said limitation is made, was *ultra vires.*

Held: That the Rule 111 (2) was not *ultra vires;* and that section 104, sub-section 2 (d) of the Bankruptcy Act, 1883, taken together with section 127 of the Act, empowered the making of such a rule, specifying within what limit the right of appeal shall be confined. *In re Hann, Ex parte Foreman*, 4 Morrell, 16; L. R. 18 Q. B. D. 393; 56 L. J. Q. B. 161; 55 L. T. 820; 35 W. R. 370—C. A.

Appeal from Rejection of Proof—Locus standi of Bankrupt.]—Where at the first meeting of the creditors of a bankrupt the chairman rejects the proof tendered by a creditor for the sum at which the bankrupt has entered and sworn to the debt in his statement of affairs, and the creditor appeals from such rejection, the bankrupt has no *locus standi* to appear and oppose the appeal, even though he may have been served with notice of the appeal; but it would seem that the bankrupt will be entitled to his costs of appearing. *In re Knight, Ex parte Smith & Co.*, 1 Morrell, 74—Cave, J.

Appeal from Rejection of Proof—Time.]—Where the trustee rejects a proof tendered by a creditor, and from such rejection an appeal is brought, it is not sufficient to apply to the Court within the twenty-one days limited by Rule 174 of the Bankruptcy Rules, 1883 (see Rule 230, Bankruptcy Rules, 1886), to fix a day and time for the hearing of the appeal, but notice of motion in the usual way must be served on the trustee within the twenty-one days. *In re Gillespie & Co., Ex parte Morrison & Aitcheson*, 1 Morrell, 278; L. R. 14 Q. B. D. 385; 52 L. T. 55; 33 W. R. 751—Cave, J.

—— Where on an appeal from the rejection of a proof by the trustee the objection is taken that such rejection was not made within the fourteen

days required by Rule 173 of the Bankruptcy Rules, 1883, the Court will allow such objection, but will treat the application as a motion to expunge the proof on behalf of the trustee, and will deal with the case accordingly. *In re Voght, Ex parte Spamer*, 3 Morrell, 164—Cave, J.; and see also *In re Sissling, Ex parte Fenton*, 2 Morrell, 289; 53 L. T. 967—D., and compare Rules 227, 228, Bankruptcy Rules, 1886.

From Refusal to Order Prosecution of Bankrupt.]—An appeal will lie to the Divisional Court from the refusal of the County Court Judge to order the prosecution of a fraudulent bankrupt. *In re Stephens, Ex parte Jones*, 2 Morrell, 20—D.

Appeal out of Time—Delay.]—Although the time allowed for appeal in bankruptcy matters may be extended by the Court, yet some ground must always be shown why this should be done, and notwithstanding the fact that when a *bonâ fide* mistake has been committed in the estimation of a proof the trustee in the bankruptcy ought not to be permitted to take a technical advantage of such mistake, where a creditor for more than a year and a half took no steps to reverse the decision of the County Court Judge refusing to allow such creditor to amend or withdraw his proof alleged to be so wrongly estimated, the Court could not permit him to reopen the case for the purpose of setting aside that decision. *In re Tricks, Ex parte Charles*, 3 Morrell, 15—Cave, J.

—— On an appeal from the refusal by the Registrar of an application of the debtor for leave to summon a fresh first meeting of his creditors, the objection was taken that the appeal was out of time. The appellant's solicitor deposed that he had mistaken the effect of the rules, and was of opinion that the time for appealing ran from the date of the perfecting of the order, instead of the date when it was pronounced.

Held: That the order appealed from was in the nature of an interlocutory order, and as no harm could be done to any one, the time would now be extended. *In re Tippett, Ex parte Tippett*, 2 Morrell, 229—C. A.

—— On an appeal by the trustee in a bankruptcy from an order of the County Court allowing a preliminary objection raised against the rejection of a proof by such trustee that such rejection was out of time as provided by Rule 173 of the Bankruptcy Rules, 1883.

Held: That the objection must fail: that the question was one merely of procedure: and that the proper course for the Registrar of the County Court to have taken was to have treated the application as a motion to expunge the proof on behalf of the trustee. *In re Sissling, Ex parte Fenton*, 2 Morrell, 289; 53 L. T. 967—D., and see also *In re Voght,*

Ex parte Spamer, 3 Morrell, 164—Cave, J.; and compare Rules 227, 228, Bankruptcy Rules, 1886.

—— An appeal from the decision of the Registrar declining to make a receiving order must be brought within twenty-one days. *In re Courtenay, Ex parte Dear*, 1 Morrell, 89—C. A.

——After a bankruptcy petition had been presented but before the day appointed for the hearing the debtor obtained the consent of the petitioning creditors to an adjournment of such hearing with a view to a settlement, and a form of consent to an extension of time was sent to the County Court Registrar by post, but on the day appointed for the hearing the Registrar dismissed the petition for non-appearance. Notice of appeal having been given by the petitioning creditors, the debtor filed his own petition, on which a receiving order was made. When the appeal came on for hearing an adjournment was taken by consent in order that a scheme of arrangement proposed by the debtor might be considered; but this subsequently fell through and the petitioning creditors now proceeded with their appeal a year after notice thereof had been given.

Held: That the delay which had occurred was fatal to the appeal; and that no sufficient reason having been put forward to justify the Court in hearing it notwithstanding such delay, the appeal must be dismissed with costs. *In re Gamlen, Ex parte Ward & Co.*, 4 Morrell, 301—D.

Deposit on.]—Where application was made by a debtor who had presented a bankruptcy petition against himself to dispense with the deposit of 20*l.* required to be lodged upon an appeal against a decision of the Registrar rescinding the receiving order at the request of the official receiver under section 14 of Bankruptcy Act, 1883.

Held: That the debtor's alleged inability to raise the necessary sum did not on the facts of the case constitute such a special circumstance under Rule 113 of the Bankruptcy Rules, 1883, as to justify the Court in granting the application. *In re Robertson*, 2 Morrell, 117—C. A.

——Where application was made by a bankrupt under Rule 131 of the Bankruptcy Rules, 1886, for leave to dispense with the deposit of 20*l.* required to be lodged upon an appeal by him from an order of the Registrar refusing to annul the adjudication.

Held: That the inability of the bankrupt himself to find the means for making the deposit, or to obtain the necessary sum from his friends, did not constitute such grounds as would justify the Court in granting the application. *In re Grepe, Ex parte Grepe*, 4 Morrell, 128—C. A.

——In the case of an appeal to the Court of Appeal by the Board of Trade, Rule 131 of the Bankruptcy Rules, 1886, does not apply, and the Board of Trade being a Government department is entitled to have the appeal entered without lodging any deposit. *In re Mutton, Ex parte The Board of Trade*, 4 Morrell, 115—D.

Costs of.]—As a matter of courtesy, the solicitor of a respondent, if he is aware of a preliminary objection to an appeal, ought as early as possible to give notice to his opponent of such preliminary objection. If, however, the notice is not given, and the appeal is dismissed on the preliminary objection, such omission to give notice is no reason for depriving the respondent of the costs of the appeal. *In re Mundy, Ex parte Stead*, 2 Morrell, 227; L. R. 15 Q. B. D. 338; 53 L. T. 655—C. A.

Costs of Trustee on.]—Where, in a case of any legal difficulty, a trustee in a bankruptcy has obtained the decision of the Court, if such trustee appeals from the decision given and does not succeed, the order for costs will be made against him personally. A trustee, therefore, before appealing from such decision ought to obtain the consent of the creditors to do so, and also to obtain a guarantee from such creditors for his own protection in the event of the appeal being decided against him. *In re Malden, Gibson & Co., Ex parte James*, 3 Morrell, 185; 55 L. T. 708—D.

—— A trustee in bankruptcy who is served with notice of an appeal, and who appears and only asks for his costs, will not be allowed his costs of appearance. *In re Arden, Ex parte Arden*, 2 Morrell, 1; L. R. 14 Q. B. D. 121; 51 L. T. 712; 33 W. R. 460—D.

Costs of Official Receiver on.]—When the official receiver has made his report upon a composition or scheme of arrangement his duty is complete, and except under very particular circumstances, he should not appear on an appeal. If the appearance of the official receiver is essential, the Court will allow the appeal to stand over for that purpose; and unless his appearance is requisite no costs will be allowed to him. *In re Reed, Bowen & Co., Ex parte Reed, Bowen & Co.*, 3 Morrell, 90; L. R. 17 Q. B. D. 244; 55 L. J. Q. B. 244; 34 W. R. 493—C. A.

—— As a general rule the official receiver, though served with a notice of appeal, ought not to appear on the hearing unless there are special circumstances which he desires to bring before the Court, and in the absence of special circumstances he will not be allowed his costs of appearance. *In re Dixon & Wilson, Ex parte Dixon & Wilson*, 1 Morrell, 98; L. R. 13 Q. B. D. 118; 53 L. J. Ch. 769; 50 L. T. 414;

32 W. R. 837—C. A., and see also *In re White, Winter & Co., Ex parte White, Winter & Co.*, 2 Morrell, 42; L. R. 14 Q. B. D. 600—C. A.

Of Creditors on.]—Creditors served with notice of appeal by a bankrupt from an order granting him a conditional discharge, will not be allowed their costs of appearing on the hearing of the appeal when the official receiver or trustee appears. *In re Salaman, Ex parte Salaman*, 2 Morrell, 61; L. R. 14 Q. B. D. 936; 54 L. J. Q. B. 238; 52 L. T. 378—C. A.

Small Bankruptcies—Leave to Appeal.]—Upon an appeal from a County Court in the case of a small bankruptcy under section 121 of the Bankruptcy Act, 1883, it was argued, against the preliminary objection taken that the necessary leave to appeal had not been obtained, that Rule 199, sub-section 5, of the Bankruptcy Rules, 1883 (see Rule 273 (6) of the Bankruptcy Rules, 1886), by which such leave is made requisite, was *ultra vires*.

Held: That the right of appeal given by the Act was a statutory right; that the same statute which gave the right could delegate to a prescribed authority the power to modify the right in the prescribed manner; and that the necessary leave not having been obtained, the appeal could not be heard. *In re Dale, Ex parte Dale*, 2 Morrell, 92; 52 L. T. 627; 33 W. R. 476—D.

—— The difficulty caused by the refusal of a County Court Judge to give leave to appeal from an order made by him in a small bankruptcy cannot be got rid of by the creditors after such leave has been refused, appointing a trustee in accordance with the proviso to section 121 of the Bankruptcy Act, 1883, whereupon "the bankruptcy shall proceed as if an order for summary administration had not been made," at any rate where the appeal by such trustee is not brought within twenty-one days. And *quære* whether the difficulty can be so got rid of, even though the trustee appointed does appeal within the limited time. *In re Richards, Ex parte Official Receiver*, 4 Morrell, 233—D.

—— In a small bankruptcy under section 121 of the Bankruptcy Act, 1883, an appeal to the Divisional Court was heard, although the leave of the County Court Judge was not obtained when the notice of appeal was given and served. *In re Stockton & Sabistan, Ex parte Gibson*, 2 Morrell, 189—D.

—— Rule 273 (6) of the Bankruptcy Rules, 1886—which provides that in a small bankruptcy no appeal shall lie from any order of the Court

except by leave of the Court—does not apply to the case of an order made upon application by a bankrupt for his discharge. *In re Rankin, Ex parte Rankin*, 4 Morrell, 311—D.

—— On July 2nd, 1886, a receiving order was made against the debtor, and on July 15th, 1886, an order for the summary administration of the estate. On September 10th, 1886, an application by the debtor to rescind the receiving order was allowed. The petitioning creditor having appealed against such rescission, the objection was taken that no leave to appeal had been obtained.

The Court allowed the appeal to proceed.

Quære: Whether, in such a case, where the receiving order has been rescinded, an appeal by the petitioning creditor against the rescission is an appeal against an order made in a summary administration for which leave is necessary. *In re Clarke, Ex parte Baynes*, 4 Morrell, 80—D.

APPRENTICESHIP FEE.

Application for Return of.]—An application under section 41, subsection (1), of the Bankruptcy Act, 1883, for the return of an apprenticeship premium paid to a bankrupt as a fee, ought to be made to the Registrar and not to the Judge in Court. *In re Richardson, Ex parte Gould*, 4 Morrell, 47; 35 W. R. 381—Cave, J.

APPROPRIATION OF SALARY.—See *Salary*.

"APPURTENANCES."

Meaning of Term.]—In a case where certain fishing boats had been mortgaged by the bankrupts, and the mortgagees laid claim to the nets and fishing gear which had been used on board the said vessels (but of which no particular nets were appropriated to or specially belonging to any particular vessel) on the ground that such nets and fishing gear came within the word "ship" in section 72, and the word "appurtenances" in the form of mortgage of a ship now in use and substituted for Form I. given in the Merchant Shipping Act, 1854.

Held: That in order to make a thing an appurtenance it must be specified: that in the present case there was no evidence to show that any specific nets were appropriated to any particular ship, but that they were used indiscriminately: and that they could not in consequence be considered "appurtenances" within the meaning of the Act. *In re Salmon & Woods, Ex parte Gould*, 2 Morrell, 137—D.

ARRANGEMENT.—See *Scheme of Arrangement*.

ARREST.

Attachment—Effect of Receiving Order.]—On February 12th, 1885, a receiving order was made against the debtor, and on February 23rd the summary administration of his estate was ordered under section 121 of the Bankruptcy Act, 1883. On February 25th, while on his way to the office of the official receiver for the purpose of handing to that officer certain moneys which he had been ordered to pay over, the debtor was served by the serjeant-at-mace of the Mayor's Court with an order of commitment for having failed to pay an instalment of 2*l.* 8*s.* 6*d.* due under a judgment previously obtained in that Court. This sum, in order to avoid arrest, the debtor paid under protest. On application made by the official receiver that it should be paid over to him.

Held: That under section 9 of the Bankruptcy Act, 1883, the creditor lost the right to enforce the payment by arrest, and that the official receiver was entitled to the money. *In re Ryley, Ex parte the Official Receiver*, 2 Morrell, 171; L. R. 15 Q. B. D. 329; 54 L. J. Q. B. 420; 33 W. R. 656—Cave, J.

Arrest between Date of and Signing of Receiving Order.]—Having regard to the terms of section 9 of the Bankruptcy Act, 1883, as to the effect of a receiving order in protecting a debtor from arrest, the order must be deemed to have been "made" on the day it was pronounced, and therefore as protecting the debtor as from that day. Therefore where a debtor had been arrested under an order of the Chancery Division made after the date of a receiving order pronounced before but not drawn up and signed by the Registrar until after the arrest, he was ordered to be discharged notwithstanding that he had by his counsel submitted to the order of attachment. *In re Manning*, L. R. 30 Ch. D. 480; 34 W. R. 111—C. A.

Compare also cases collected under title *Committal—Attachment.*

ASSIGNMENT.

Of Debt.]—A shipbuilder agreed to build a vessel, the price to be paid in specified instalments. Part of the work having been done, but less than the value of such part having been paid to the builder, he charged in favour of a creditor the instalment due to him on the delivery of the vessel. Before the ship was completed he became bankrupt. The trustee in the bankruptcy completed the vessel, and in so doing expended less than the amount which remained to be paid by the purchaser.

Held: That the charge, being upon money which had been already earned by the builder, was valid as against the trustee. *In re Toward, Ex parte Moss*, L. R. 14 Q. B. D. 310—C. A.

Of Book Debts.]—An assignment of the book debts will carry the books, so that the person entitled to the book debts under the deed is entitled to the books of account; and Rule 259 (see Rule 349, Bankruptcy Rules, 1886) was intended to apply only to a case where a person not entitled to the debts sets up some claim to the books. *In re White & Co., Ex parte The Official Receiver,* 1 Morrell, 77—Cave, J.

——A bill of sale contained an assignment (*inter alia*) of all the book debts which might, during the continuance of the security, become due and owing to the mortgagor.

Held: That such an assignment of future book debts, not being limited to book debts to arise in any particular business, was invalid on the ground that the subject-matter was not sufficiently defined, and that therefore it did not operate to pass the property in a book debt which came into existence after the assignment. *Official Receiver* v. *Tailby,* L. R. 18 Q. B. D. 25; 56 L. J. Q. B. 30; 55 L. T. 626; 35 W. R. 91—C. A.

Of Judgment Debt.]—The assignee of a judgment debt is not "a creditor" who "has obtained a final judgment" against the judgment debtor within the meaning of section 4, sub-section 1 (g), of the Bankruptcy Act, 1883; and such assignee is not entitled to issue a bankruptcy notice against the debtor in respect of the debt. *In re Keeling, Ex parte Blanchett,* 3 Morrell, 157; L. R. 17 Q. B. D. 303; 55 L. J. Q. B. 327; 34 W. R. 438—C. A.

Of Lease.]—The assignee of a lease of certain premises having become bankrupt and rent being in arrear, judgment for the same was recovered against his assignor who was under covenant to pay such rent. The assignor thereupon proved against the estate of the bankrupt for the amount so paid; and also sought to prove in respect of his contingent liability for the rent during the time the said lease had yet to run. The last-mentioned proof was rejected by the trustee in the bankruptcy.

Held: That the proof must be admitted; and that an estimate must be made by the trustee in the bankruptcy of the value of the liability under section 37, sub-section (4), of the Bankruptcy Act, 1883. *In re Hinks, Ex parte Verdi,* 3 Morrell, 218—Cave, J.

Of Lease, Goodwill, Stock, &c.]—The debtor, who carried on business at two different premises, within a few days of filing his petition executed an assignment handing over his interest in the lease, goodwill, and stock of one of the said premises to a judgment creditor who was threatening to levy execution, such assignment to be in full satisfaction of the whole judgment debt, and the judgment creditor was to redeem the lease of the

property, which had been deposited on mortgage with a loan society, and to pay rent due, &c.

Held: That there was no proof that the motive of the debtor was to prefer the creditor; that at the time of the assignment the judgment creditor could seize and have his debt paid out of the goods at both the places of business of the debtor; that the effect of the assignment was to relieve the debtor of liability at one place of business, and could not be deemed to be fraudulent preference. *In re Wilkinson, Ex parte the Official Receiver*, 1 Morrell, 65—Cave, J.

Of Property to Trustee for Benefit of Creditors generally.]—The fact that a large majority in number and value of the creditors of a debtor have assented to a deed assigning to trustees all the debtor's property for the benefit of his creditors generally, is not a "sufficient cause" within the meaning of section 7, sub-section (3), of the Bankruptcy Act, 1883, for dismissing a petition for a receiving order against the debtor presented by a dissenting creditor even for a small amount; such receiving order being founded on the act of bankruptcy committed by the execution of the deed. It is the intention of the legislature that proposals for a composition or scheme of arrangement shall only be entertained after a receiving order has been made.

An official receiver ought not to appear at the hearing of an appeal from a receiving order, unless it is necessary for him to do so for the purpose of bringing some special circumstance to the notice of the Court; and this special circumstance the Court will take into consideration when the costs are applied for. *In re Dixon & Wilson, Ex parte Dixon & Wilson*, 1 Morrell, 98; L. R. 13 Q. B. D. 118; 53 L. J. Ch. 769; 50 L. T. 414; 32 W. R. 837—C. A.

——Where a deed of assignment of the whole of their property executed by the debtors for the benefit of their creditors generally contained a proviso for the payment out of the assets in the first instance of the costs and expenses of the trustee under the said deed of assignment, such trustee was not entitled (on the debtors being adjudged bankrupt upon a petition founded on the deed as an act of bankruptcy) to retain as against the trustee in the bankruptcy assets in his hands, on the ground that a sum exceeding the said assets was due to him for work and labour done. *In re J. & H. Richards, Ex parte the Official Receiver*, 1 Morrell, 242; 32 W. R. 1001—Wills, J.

——Where a debtor has assigned the whole of his property to a trustee for the benefit of his creditors generally, and such trustee has taken possession of the property and carried on the debtor's business, in the

event of the debtor subsequently being adjudged bankrupt on a petition founded on the act of bankruptcy committed by the execution of the deed of assignment, the trustee in the bankruptcy must elect to treat the trustee under the deed either as his agent or as a trespasser. If the trustee in the bankruptcy elects to treat the trustee under the deed as a trespasser, he can only claim from him any property of the bankrupt which remains in his possession unconverted, and the value, at the time when he took possession, of any property which he has taken possession of and has converted. *In re Riddeough, Ex parte Vaughan*, 1 Morrell, 258; L. R. 14 Q. B. D. 25; 33 W. R. 151—D.

——A debtor on August 24th, 1884, on being pressed by a creditor who had obtained judgment for payment of the debt due to him, gave to an auctioneer who was about to sell the farming stock of such debtor, a document by which he authorised and requested him to pay to such creditor, after deducting any rent which might be due to the landlord, the debt due to him out of the first proceeds of the sale, and appropriated the sum necessary to pay the debt out of the proceeds of the sale for the purposes of the payment. On Oct. 22nd, 1884, a receiving order was made against the debtor, and the sum so appropriated was subsequently claimed by the official receiver as trustee in the bankruptcy on the grounds (1) That the document was an assignment of the whole of the debtor's property, and as such amounted to an act of bankruptcy. (2) That it was a fraudulent preference.

Held: That the document in question did not amount to an assignment of the whole of the debtor's property, that the principal motive of the debtor was not to favour the creditor, and that the transaction did not constitute a fraudulent preference. *In re Glanville, Ex parte the Trustee*, 2 Morrell, 71; 33 W. R. 523—Cave, J.

On August 20th, 1885, in accordance with a resolution passed at a meeting of creditors the debtor executed a deed of assignment, vesting his estate in a trustee for their benefit. On Oct. 28th, 1885, a bankruptcy petition was presented against the debtor, the act of bankruptcy alleged being the execution of the deed of assignment. On Oct. 31st, 1885, the trustee under the deed paid out of assets in his hands the sum of 20*l.* 7*s.* 8*d.* to a firm of solicitors, being the amount of their bill of costs incurred in connection with the meeting of creditors, and in preparing the deed of assignment, and also in collecting certain book debts. On January 20th, 1886, a receiving order was made against the debtor, and the trustee under the deed sent to the official receiver the balance of assets in his hands, after deducting the amount so paid to the solicitors, together with an account of receipts and payments in connection

with the estate. The trustee appointed in the bankruptcy applied for an order for payment of the 20*l.* 7*s.* 8*d.*

Held: That the application must be granted; but that certain items for collecting book debts, amounting together to 2*l.*, would under the circumstances be allowed, and an order made for payment of 18*l.* 7*s.* 8*d.* *In re Forster, Ex parte Rawlings,* 4 Morrell, 292; 36 W. R. 144—Cave, J.

ATTACHMENT.

Where a judgment creditor obtained a garnishee order in respect of a debt due to the judgment debtor, and a dispute having arisen, payment into Court of the debt to abide further order was directed, and the judgment debtor subsequently become bankrupt.

Held: That such payment into Court to abide further order did not constitute a "receipt of the debt" by which an attachment is completed within section 45, sub-section (2) of the Bankruptcy Act, 1883.

That the meaning and intention of the legislature by the Bankruptcy Act, 1883, was to get rid of all questions which might have arisen before that Act was passed, and to put the law upon a very simple and plain foundation: and that a judgment creditor having attached a debt does not become entitled to retain it unless he has received the debt before the bankruptcy. *Butler* v. *Wearing,* 3 Morrell, 5; L. R, 17 Q. B. D. 182—Manisty, J.

After a commitment order had been issued by the Mayor's Court in London against a judgment debtor for default in payment of an instalment of the judgment debt a receiving order was made against him under section 9 of the Bankruptcy Act, 1883.

Held: That the commitment order was not a process for contempt of Court, but to enforce payment of a debt provable in the bankruptcy, and that after the making of the receiving order the debtor was privileged from arrest. *In re Ryley, Ex parte Official Receiver,* 2 Morrell, 171; L. R. 15 Q. B. D. 329; 54 L. J. Q. B. 420; 33 W. R. 656—Cave, J.

Compare also cases under titles, *Arrest, Committal.*

ATTORNEY.

Signature of Petition by.]—A bankruptcy petition presented by a creditor may be signed on behalf of such creditor by his duly constituted attorney. *In re Wallace, Ex parte Wallace,* 1 Morrell, 246; L. R. 14 Q. B. D. 22; 54 L. J. Q. B. 293; 51 L. T. 551; 33 W. R. 66—C. A.

AUDIENCE, RIGHT OF.

Of Solicitor.]—Under the Bankruptcy Act, 1883, and the Bankruptcy Appeals (County Courts) Act, 1884, a solicitor has the same right of audience in the Divisional Court sitting as a Court of Appeal from orders of the County Courts in bankruptcy matters, as that formerly possessed under the Bankruptcy Act, 1869, in the case of an appeal from the County Court to the chief judge in bankruptcy. *In re Barnett, Ex parte the Trustee*, 2 Morrell, 122; L. R. 15 Q. B. D. 169; 54 L. J. Q. B. 354; 53 L. T. 448—D.

——The right of audience given to a solicitor in bankruptcy matters by section 151 of the Bankruptcy Act, 1883, is limited to the High Court, and does not extend to the Court of Appeal. *In re Elderton, Ex parte Russell*, 4 Morrell, 36—C. A.

Of Debtor.]—Where a trustee in a liquidation applied to the County Court for directions as to the acceptance of an offer for the purchase of the debtor's property, and notice was given to the debtors, but at the hearing of the application the County Court Judge refused to hear the solicitor for the debtors or to receive evidence on their behalf.

Held: That notice having been given to the debtors they ought to have been heard; and that an appeal lay from such refusal of the County Court Judge to do so.

Quære: Whether when a trustee applies to the Court for directions in any particular matter, the debtor is in any event entitled to appear and be heard. *In re Webb & Sons, Ex parte Webb & Sons*, 4 Morrell, 52—Cave, J.

BALANCE ORDER.

"A balance order" made in the voluntary winding-up of a company, whereby a contributory was ordered to pay in to the liquidator certain calls made in respect of the said company before the commencement of the winding-up, is not a "final judgment" within the meaning of section 4, sub-section 1 (g), of the Bankruptcy Act, 1883, so as to support a bankruptcy notice. *In re Sanders, Ex parte Whinney*, 1 Morrell, 185; L. R. 13 Q. B. D. 476—D.

——"A balance order" for the payment of calls upon shares, made on a contributory in the winding-up of a company, is not a "final judgment" within the meaning of section 4, sub-section 1 (g), of the Bankruptcy Act, 1883, so as to enable the liquidator of the company to issue a bankruptcy notice against the contributory in respect of the amount ordered by the balance order to be paid. *In re Tennant, Ex parte*

Grimwade, 3 Morrell, 166, L. R. 17 Q. B. D. 357; 55 L. J. Q. B. 495 —C. A.

BANKRUPTCY NOTICE.

——*Who may serve.*]—A creditor in order to serve a bankruptcy notice under section 4, sub-section 1 (g) of the Bankruptcy Act, 1883, must be entitled and in a position to issue execution: and in consequence a bankruptcy notice against a judgment debtor cannot be issued by the executor of a creditor who has obtained final judgment, unless such executor has first obtained leave from the Court to issue execution on the judgment under Rule 23 of Order XLII. of the Rules of the Supreme Court, 1883. *In re Woodall, Ex parte Woodall*, 1 Morrell, 201; L. R. 13 Q. B. D. 479; 53 L. J. Ch. 966; 50 L. T. 747; 32 W. R. 774 —C. A.

——A creditor who has obtained a final judgment cannot under section 4, sub-section 1 (g), of the Bankruptcy Act, 1883, issue a bankruptcy notice against the judgment debtor, unless such creditor is also in a position to issue immediate execution on the judgment. Thus, where final judgment is obtained against a firm, a bankruptcy notice cannot be issued against a member of such firm who has not been served with the writ, and has not appeared, or admitted that he is or has been adjudged to be a partner, unless under Order XLII., Rule 10, of the Rules of the Supreme Court, 1883, leave to issue execution against such partner has been obtained. *In re Ide, Ex parte Ide*, 3 Morrell, 239; L. R. 17 Q. B. D. 755; 55 L. J. Q. B. 484; 35 W. R. 20—C. A.

——If execution may be issued on a judgment, a bankruptcy notice under section 4, sub-section 1 (g), of the Bankruptcy Act, 1883, may be issued. Thus, where a bankruptcy notice has been issued in respect of a judgment debt and withdrawn, a second bankruptcy notice may be issued in respect of the same debt. Judgment for 438*l.* 12*s.* and costs having been recovered against a debtor, the costs were taxed at 37*l.*, and the creditor issued a bankruptcy notice in respect of the judgment debt and costs. An agreement was thereupon come to between the debtor and the creditor, by which the debt and costs were agreed at 500*l.*, and the debtor agreed to pay 100*l.* at once, such 100*l.* including the 37*l.* taxed costs, 25*l.* costs of the bankruptcy proceedings, and 38*l.* part of the judgment debt, and the balance of the debt by monthly instalments of 20*l.*; in case any instalment was not duly paid the whole amount then unpaid to be forthwith due and payable. The 100*l.* and some of the instalments were duly paid, but on default subsequently being made, a bankruptcy notice for the unpaid balance was issued by the creditor.

Held: That the agreement entered into was to the effect that, upon default of payment of any instalment. the unpaid balance was to become due under the judgment, and that the creditor was entitled to issue a bankruptcy notice in respect of the debt. *In re Feast, Ex parte Feast,* 4 Morrell, 37—C. A.

——The assignee of a judgment debt is not "a creditor" who "has obtained a final judgment" against the judgment debtor within the meaning of section 4, sub-section 1 (g), of the Bankruptcy Act, 1883: and such assignee is not entitled to issue a bankruptcy notice against the debtor in respect of the debt. The words of the said sub-section cannot be extended further than to the personal representative of the creditor who has obtained the judgment: and the decision of the Court of Appeal in the case of *In re Woodall, Ex parte Woodall* (see 1 Morrell, 201; L. R. 13 Q. B. D. 479), did not go further than to such personal representative. *In re Keeling, Ex parte Blanchett,* 3 Morrell, 157; L. R. 17 Q. B. D. 303; 55 L. J. Q. B. 327; 34 W. R. 438—C. A.

"*Final Judgment.*"]—A garnishee order absolute is not a "final judgment" against the garnishee within the meaning of section 4, sub-section 1 (g), of the Bankruptcy Act, 1883, so as to make the failure to comply with a bankruptcy notice founded upon it an act of bankruptcy on the part of the garnishee. *Ex parte Chinery, In re Chinery,* 1 Morrell, 31; L. R. 12 Q. B. D. 342; 53 L. J. Ch. 662; 50 L. T. 342; 32 W. R. 469—C. A.

——The fact that an order has been made against a defendant requiring him to pay the taxed costs in an action within a specified time, does not constitute such order a "final judgment" within the meaning of section 4, sub-section 1 (g), of the Bankruptcy Act, 1883, so as to entitle the plaintiff, in the event of the defendant failing to comply with the terms of the order, to obtain a bankruptcy notice against the defendant founded on the order. *In re Cohen, Ex parte Schmitz,* 1 Morrell, 55; L. R. 12 Q. B. D. 509; 53 L. J. Ch. 1168; 50 L. T. 747; 32 W. R. 812—C. A.

——A "balance order" made in the voluntary winding-up of a company, whereby a contributory was ordered to pay in to the liquidator certain calls made in respect of the said company before the commencement of the winding-up, is not a "final judgment" within the meaning of section 4, sub-section 1 (g), of the Bankruptcy Act, 1883, so as to support a bankruptcy notice. *In re Sanders, Ex parte Whinney,* 1 Morrell, 185; L. R. 13 Q. B. D. 476—D.; and *In re Tennant, Ex parte Grimwade,* 3 Morrell, 166; L. R. 17 Q. B. D. 357; 55 L. J. Q. B. 495—C. A.

Service of by Liquidator.]—The power given by section 95 of the Companies Act to a liquidator to bring or defend any action, suit, or prosecution, or *other legal proceeding*, civil or criminal, in the name and on behalf of the company, includes the power to serve a bankruptcy notice upon a judgment debtor of such company under section 4, sub-section 1 (*g*), of the Bankruptcy Act, 1883. But the provisions of section 95 of the Companies Act must be strictly complied with, and the proceedings in connection with serving such bankruptcy notice must be taken "in the name and on behalf of the company," and not by the liquidator in his own name. *In re Winterbottom, Ex parte Winterbottom*, 4 Morrell, 5; L. R. 18 Q. B. D. 446; 56 L. J. Q. B. 238; 56 L. T. 168—D.

Conditional Payment of Debt.]—Where a bill has been given by a debtor, upon whom a bankruptcy notice has been served, for the amount of the judgment debt, and has been taken by the creditor, such bill is sufficient satisfaction of the requirements of the bankruptcy notice under section 4, sub-section 1 (g), of the Bankruptcy Act, 1883, so as to prevent such creditor afterwards proceeding to obtain a petition against the debtor on the bankruptcy notice. *In re Matthew, Ex parte Matthew*, 1 Morrell, 47; L. R. 12 Q. B. D. 506; 51 L. T. 179; 32 W. R. 813—C. A.

Who may Petition upon failure to Comply with Terms of.]—Where, by failing to comply with the terms of a bankruptcy notice, a debtor has committed an act of bankruptcy under section 4, sub-section 1 (g), any creditor may avail himself of such act of bankruptcy for the purpose of presenting a petition, and the right to present a petition is not limited to that creditor by whom the bankruptcy notice has been served. *In re Hastings, Ex parte Dearle*, 1 Morrell, 281; L. R. 14 Q. B. D. 184; 54 L. J. Q. B. 74; 33 W. R. 440—C. A.

Appeal Pending—Stay of Proceedings.]—Where a bankruptcy petition is presented by a creditor founded on an act of bankruptcy committed by the failure of the debtor to comply with the terms of a bankruptcy notice to pay a judgment debt, and an appeal is pending from such judgment, it is a matter of discretion for the Registrar whether he will make a receiving order, or stay the proceedings; and the Court of Appeal will not interfere unless such exercise of discretion is clearly wrong. *In re Rhodes, Ex parte Heyworth*, 1 Morrell, 269; L. R. 14 Q. B. D. 49; 54 L. J. Q. B. 198; 52 L. T. 201—C. A.

Interpleader Order—Stay of Execution.]—On August 23rd, 1886, judgment was recovered against the debtor, and execution was issued

under which the sheriff levied on August 26th. On September 1st, a third person having claimed the goods, an interpleader order was obtained by the sheriff under which the claimant paid 120*l.* into Court, and thereupon in pursuance of the order the sheriff withdrew from possession. On September 20th the issue in the interpleader was settled, but on September 27th, before such issue was decided, the judgment creditor served on the debtor a bankruptcy notice under section 4, sub-section 1 (g), of the Bankruptcy Act, 1883. On an appeal from the decision of the County Court Registrar refusing to set aside the notice,

Held: That when the interpleader order was made, and an issue directed, it was in substance a stay of execution until such issue in the interpleader was decided: and that the creditor not being in a position to issue execution on the judgment was not entitled to serve a bankruptcy notice on the debtor at the date when such notice was served. *In re Ford, Ex parte Ford*, 3 Morrell, 283; L. R. 18 Q. B. D. 369; 56 L. J. Q. B. 188; 56 L. T. 166—D.

Formal Defects in.]—On January 14th, 1887, judgment was recovered against the debtor for 446*l.*, and execution was issued under which the sheriff levied; but a third person having claimed the goods, an interpleader order was obtained, whereby upon payment of 20*l.* into Court by the claimant, the sheriff was directed to withdraw. On March 14th, 1887, a bankruptcy notice under section 4, sub-section 1 (g), of the Bankruptcy Act, requiring payment of the debt, was served upon the debtor, but the notice was dismissed by the Registrar of the County Court, on the ground that within the meaning of the section execution had been stayed.

Held (on appeal): That in any event there had been no stay, except as to 20*l.*; that in the case of *In re Ford, Ex parte Ford* (see 3 Morrell, 283), the whole amount of the judgment debt had been levied, and the case was so distinguishable; and that the creditor was entitled to issue a bankruptcy notice.

That the fact that the creditor had omitted to insert his name in the heading of the bankruptcy notice, such heading being left "*Ex parte* . . ." —the notice being sued out by him in person, and giving complete information on the face of it who the creditor was—did not render the notice invalid.

That the fact of the notice claiming the whole debt of 446*l.* without considering the 20*l.* which might be stayed, only amounted to a formal error which the Court would rectify. *In re Bates, Ex parte Lindsey*, 4 Morrell, 192; 57 L. T. 417; 35 W. R. 668—D.

Application to Set Aside—Evidence.]—A debtor, after the service of a bankruptcy notice upon him under section 4, sub-section 1 (g), of the Bankruptcy Act, 1883, commenced an action against his creditor to set aside the judgment on which such notice was founded, and prayed that an account might be taken, and made other claims in the nature of a counterclaim. The debtor delivered the statement of claim in the action, and applied to the Court to dismiss the bankruptcy notice. The Registrar, after reading the statement of claim, adjourned the application *sine die*, with liberty to apply.

Held (on appeal): That the statement of claim was not evidence; and the Registrar, before interfering with the operation of the bankruptcy notice, ought to have been satisfied by evidence that the debtor had at any rate some reasonable ground for bringing the action. *In re Foster, Ex parte Basan*, 2 Morrell, 29—C. A.

Judgment for Costs.]—Where, in consequence of a breach of covenant of articles of partnership, an action was brought in the Chancery Division and judgment obtained, restraining the defendant from carrying on business within a certain radius—dissolving the partnership—ordering an enquiry as to the amount of damage sustained by the plaintiff—and further ordering the costs of the defendant to be paid—and pending the enquiry as to the damages, the costs were taxed, and only a portion being paid, a bankruptcy notice was served on the debtor under section 4, sub-section 1 (g), of the Bankruptcy Act, 1883, for the remainder.

Held: That the sum in respect of which the bankruptcy notice was served was due under a final judgment within the meaning of the section, the amount in question being wholly independent of the result of the enquiry. ——That the words "a creditor" in section 4, sub-section 1 (g), of the Bankruptcy Act, 1813, mean a creditor under or by means of a final judgment. *In re Faithfull, Ex parte Moore*, 2 Morrell, 52; L. R. 14 Q. B. D. 627; 54 L. J. Q. B. 190; 52 L. T. 376; 33 W. R. 438—C. A.

Compensation Deed—Preference.]—Where a debtor against whom no proceedings in bankruptcy had been taken, entered into an arrangement with his creditors, by which he agreed to pay 10*s.* in the pound within six years to any creditors signing the deed of arrangement, and the creditors covenanted by the said deed not to sue the debtor, or to enforce any judgment already obtained, and to forego all their claims on him if the provisions of the deed were carried out: which deed was signed by a creditor who had previously obtained a final judgment against the debtor: and after such creditor had signed, three other creditors signed the deed, who it was subsequently discovered, had received from the

debtor's brother, with the knowledge of the debtor, certain other payments over and above the 10*s.* in the pound secured by the deed.

Held: That the principle laid down in the case of *Daughish* v. *Tennent* (L. R. 2 Q. B. 49) applies to all composition deeds whether under a statute or not; that it is an implied condition in all such deeds that all the creditors shall come into the arrangement on perfectly equal terms; and that the order of the Registrar refusing to set aside a bankruptcy notice served upon the debtor by the creditor who had obtained a final judgment was a right order, such creditor being no longer bound by the deed. *In re Milner, Ex parte Milner*, 2 Morrell, 190; L. R. 15 Q. B. D. 605; 54 L. J. Q. B. 425; 33 W. R. 867—C. A.

BETTING.—See *Speculation.*

BILL OF EXCHANGE.

Where a bill has been given by a debtor, upon whom a bankruptcy notice has been served, for the amount of the judgment debt, and has been taken by the creditor, such bill is sufficient satisfaction of the requirements of the bankruptcy notice under section 4, sub-section 1 (g), of the Bankruptcy Act, 1883, so as to prevent such creditor afterwards proceeding to obtain a petition against the debtor on the bankruptcy notice. *In re Matthew, Ex parte Matthew*, 1 Morrell, 47; L. R. 12 Q. B. D. 506; 51 L. T. 179; 32 W. R. 813—C. A.

——Where six bills of exchange were drawn in Tobago, accepted by the debtors, and made payable at the London and Westminster Bank, but were subsequently dishonoured, and thereupon sent back to Tobago, and taken up by the drawers who sought to prove for the re-exchange against the debtor's estate.

Held: That subject to the damages being proved, the claim ought to be admitted: that the re-exchange mentioned in section 57 of the Bills of Exchange Act, 1882, was simply the difference between English and foreign currency, and that under that Act the claim was still admissible. *In re Gillespie, Ex parte Roberts*, 2 Morrell, 278; L. R. 16 Q. B. D. 702; 55 L. J. Q. B. 131; 53 L. T. 770; 34 W. R. 258—Cave, J. And see L. R. 18 Q. B. D. 286; 56 L. J. Q. B. 74; 56 L. T. 599; 35 W. R. 128—C. A.

BILL OF SALE.

Omission to specify Place where Goods situate.]—A bill of sale is not void under the Bills of Sale Act, 1882, although it may omit to specify

the *locus* or place at which the goods assigned are situate. *In re Lane, Ex parte Hill*, 3 Morrell, 148; L. R. 17 Q. B. D. 74—D.

Licence to take Possession—Form.]—Although it is from its nature impossible that a licence to take immediate possession of goods as a security for a debt, which is a bill of sale within the Bills of Sale Acts, 1878 and 1882, should be made in the form given in the schedule to the Act of 1882, such a licence is void under section 9 of that Act as between grantor and grantee, the object of the Act being to make void every bill of sale given to secure the payment of money by the grantor unless it is made substantially in accordance with the form given in the schedule. The *ratio decidendi* in the cases of *In re Hall, Ex parte Close* (L. R. 14 Q. B. D. 386), and *In re Cunningham & Co., Attenborough's Case* (L. R. 28 Ch. D. 682), disapproved. *In re Townsend, Ex parte Parsons*, 3 Morrell, 36; L. R. 16 Q. B. D. 532; 55 L. J. Q. B. 137; 53 L. T. 897; 34 W. R. 329—C. A.

Document accompanying Pledge.]—Where a transaction is one of pawn or pledge, by which goods are deposited by the pledgor with the pledgee as security for the payment of money then advanced by the pledgee to the pledgor, such transaction is not within the Bills of Sale Acts; and a document signed at the time by the pledgor, recording the transaction and regulating the rights of the pledgee as to the sale of the goods, is not a bill of sale within the meaning of the said Acts.

The effect of the decision in the case of *In re Townsend, Ex parte Parsons* (see 3 Morrell, 36; L. R. 16 Q. B. D. 532) was to determine that an authority to take possession of goods as security for the payment of money is not exempted from the Bills of Sale Acts because it is an authority to take immediate possession: and that a transaction which is contrary to the Bills of Sale Acts is not taken out of the operation of such Acts because from its nature such transaction cannot be expressed in the statutory form of a bill of sale. *In re Hardwick, Ex parte Hubbard*, 3 Morrell, 246; L. R. 17 Q. B. D. 690; 55 L. J. Q. B. 490; 35 W. R. 2—C. A.

Consideration — Money "now paid."]—On April 22nd, 1886, in consequence of the discovery that a previous bill of sale given by the debtor on October 25th, 1885, was invalid, a new bill of sale instead thereof was executed. This new bill of sale was expressed to be made in consideration of the sum of 220*l.* "now paid" by the grantee to the grantor, but no money actually passed on its execution. The trustee in the bankruptcy of the grantor having sought to set aside such bill of

sale on the ground that the consideration was not truly stated within section 8 of the Bills of Sale Act, 1882.

Held: That the consideration was truly stated so as to satisfy the said section; that the case was within the decision given in *The Credit Co.* v. *Pott* (L. R. 6 Q. B. D. 295); and that the addition of the word "truly" in section 8 of the Bills of Sale Act, 1882, did not take the case out of that decision. *In re Hockaday, Ex parte Nelson,* 4 Morrell, 12; 55 L. T. 819; 35 W. R. 264—C. A.

Form.]—A bill of sale contained a covenant by the grantor that he would not remove the goods without the consent of the grantee. It was also provided that the grantor should pay to the grantee the principal sum and interest then due on June 1st: provided that if the grantor should not break any of the covenants, and should not become bankrupt, and should pay to the grantee the principal sum with interest by equal monthly instalments of three guineas, then, and in that case, the grantee should accept payment by such instalments.

Held: That the provision as to payment by instalments was a provision in ease of the debtor; and that neither of the above-mentioned covenants rendered the bill of sale invalid. *In re Coton, Ex parte Payne,* 4 Morrell, 90; 56 L. T. 571; 35 W. R. 476—D.

Injunction—Undertaking as to Damages.]—An injunction restraining a person, not a party to the bankruptcy proceedings, from dealing with property of the debtor claimed under a bill of sale, the validity of which is disputed, ought not to be granted without requiring an undertaking to be given for damages by the person obtaining the order. *In re F. H. Johnstone, Ex parte Abraham,* 1 Morrell, 32; 50 L. T. 184—Cave, J.

BOARD OF TRADE.

Order for Account—Non-compliance.]—When the Board of Trade applies to the Court under section 102, sub-section (5) of the Bankruptcy Act, 1883, to enforce an order made by the Board under section 162, sub-section (2) against a trustee to submit to them an account of receipts and expenditure, the Court will in the first instance make an order that the trustee obey the order of the Board of Trade, but will not add to that order a conditional order for the committal of such trustee. *In re Margetts, Ex parte the Board of Trade,* 1 Morrell, 211; 32 W. R. 1002—Cave, J.

Discharge of Trustee—Power to require Account.]—A trustee under the Bankruptcy Act, 1869, who has obtained his statutory release and discharge under that Act after August 25th, 1883 (the date of the

passing of the Bankruptcy Act, 1883), is not thereby relieved from rendering an account to the Board of Trade of his receipts and payments as such trustee, if on that date he had in his hands any undistributed funds, although such funds may have been disposed of by a subsequent resolution of the creditors. *In re Chudley, Ex parte the Board of Trade*, 2 Morrell, 8; L. R. 14 Q. B. D. 402; 33 W. R. 708—Cave, J.

Trustee removed—Power to require Account.]—Although a trustee under a scheme of arrangement has been removed from office, the Board of Trade has power to demand a statement of his receipts and payments as such trustee, and to apply to the Court under section 102, sub-section (5), of the Bankruptcy Act, 1883, to enforce that order in case of neglect or refusal to comply with it. *In re Rogers, Ex parte the Board of Trade*, 4 Morrell, 67; 35 W. R. 457—Cave, J.

Stamp.]—Where no estate has come into the hands of a trustee under a scheme of arrangement, such trustee must himself provide the stamp necessary to be affixed to the affidavit of no receipts required to be forwarded to the Board of Trade under Rule 291 of the Bankruptcy Rules, 1886. In such case an unstamped affidavit cannot be accepted, nor the amount necessary for the said stamp provided from the Bankruptcy Estates Account. *In re Rowlands, Ex parte the Board of Trade*, 4 Morrell, 70; 35 W. R. 457—Cave, J.

Costs against.]—Although the Board of Trade act in a public capacity, the Court will not in a proper case consider them as differing from an ordinary litigant. *In re Rodway, Ex parte Phillips*, 1 Morrell, 232—Wills, J.

Objection to Trustee by.]—The fact that a trustee has been proposed by the brother of the bankrupt; and that such trustee has previously voted in favour of a composition or scheme of arrangement of the debtor's affairs; and that no committee of inspection is appointed, will not justify the Board of Trade in objecting to the appointment of such trustee under section 21, sub-section (2), of the Bankruptcy Act, 1883, even though the majority in number of the creditors are desirous that such objection should be made. *In re Games, Ex parte the Board of Trade*, 1 Morrell, 216—Cave, J.

Permission of, to Official Receiver to Compromise.]—A debtor on May 6th presented his own petition on which a receiving order was made, and on May 7th the official receiver took possession of the debtor's property. On June 30th a compromise was entered into between the official receiver and two holders of bills of sale over the property of the debtor. On July

9th the debtor was adjudicated bankrupt, and on July 23rd the certificate of approval of the trustee in the bankruptcy was granted by the Board of Trade. The trustee subsequently applied to the Court to set aside the compromise.

Held: That on its appearing that the official receiver had the permission of the Board of Trade to make this compromise the application of the trustee must be refused. *In re Johnstone, Ex parte Singleton*, 2 Morrell, 206—D.

Appeal by.]—Rule 237 of the Bankruptcy Rules, 1886, is not *ultra vires*, but is a rule for carrying into effect the objects of the Bankruptcy Act, 1883; and the Board of Trade are entitled under that rule to appeal from any order of the Court made upon an application by a bankrupt for his discharge. *In re Stainton, Ex parte the Board of Trade*, 4 Morrell, 242; L. L. 19 Q. B. D. 182; 57 L. T. 202; 35 W. R. 667—D.

——In the case of an appeal to the Court of Appeal by the Board of Trade, Rule 131 of the Bankruptcy Rules, 1886, does not apply, and the Board of Trade being a Government Department is entitled to have the appeal entered without lodging any deposit. *In re Mutton, Ex parte the Board of Trade*, 4 Morrell, 115—D.

BOOK DEBTS.

An assignment of the book debts will carry the books, so that the person entitled to the book debts under the deed is entitled to the books of account; and Rule 259 of the Bankruptcy Rules, 1883 (see Rule 349, Bankruptcy Rules, 1886), was intended to apply only to a case where a person not entitled to the debts sets up some claim to the books. *In re White & Co., Ex parte the Official Receiver*, 1 Morrell, 77—Cave, J.

BOOKS.

Proper to be kept.]—In deciding as to the granting or refusing the discharge of a bankrupt or the approval of a composition or scheme of arrangement, the question whether the debtor has kept proper books is one of primary importance. *In re Wallace, Ex parte Campbell*, 2 Morrell, 167; L. R. 15 Q. B. D. 213; 54 L. J. Q. B. 382; 53 L. T. 208—C. A.

——In deciding as to the granting or refusing the approval of the Court to a composition or scheme of arrangement, the question whether the debtor has kept proper books is one of primary importance; and the neglect of a trader to have books properly kept and balanced from time to time, so that the real state of his affairs may at once appear, is a serious offence. *In re Reed, Bowen & Co., Ex parte Reed, Bowen & Co.*, 3 Morrell, 90; L. R. 17 Q. B. D. 244; 55 L. J. Q. B. 244; 34

W. R. 493—C. A. And see also *In re Heap, Ex parte the Board of Trade*, 4 Morrell, 314—D.

——The bankrupt, who carried on business as a hatter, made certain purchases of land and houses adjoining property belonging to himself for the purpose of resale. The books in the hatter's business were properly kept and balanced, but no proper books were kept with respect to the land purchases through which the bankruptcy subsequently occurred. On application for discharge the official receiver submitted that the bankrupt had brought himself within the provisions of section 28, sub-section 3 (*a*), of the Bankruptcy Act, 1883, in that he had "omitted to keep such books of account as are usual and proper in the business carried on by him, and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy."

Held: (1) That the bankrupt in making the purchases of land under the circumstances was not carrying on a business, and did not fall within the provisions of section 28, sub-section 3 (*a*), by omitting to keep books of account.

(2) That such books as are usual and proper in the business carried on are to be kept; and if there are no books usually kept in a particular trade, or if a bankrupt is not a trader, he does not fall within the section by omitting to keep books. *In re Mutton, Ex parte the Board of Trade*, 4 Morrell, 180; L. R. 19 Q. B. D. 102; 56 L. J. Q. B. 395; 56 L. T. 802; 35 W. R. 561—C. A.

"*Books of Accounts.*"]—Letters, cheque-books and other general documents are not "books of accounts" within the meaning of Rule 259 of the Bankruptcy Rules, 1883, which can be claimed by the trustee in a bankruptcy, even though from such documents an account might be made up. *In re Winslow, Ex parte the Trustee*, 3 Morrell, 60; L. R. 16 Q. B. D. 696; 55 L. J. Q. B. 238; 54 L. T. 306; 34 W. R. 534—Cave, J. See Rule 349, Bankruptcy Rules, 1886.

Order to hand over.]—An application for an order to hand over books and papers under section 118 of the Bankruptcy Act, 1883, which provides that every British Court having jurisdiction in bankruptcy or insolvency shall be auxiliary to each other, ought to be made to the Registrar and not to the Judge in Court. *In re Firbank, Ex parte Knight*, 4 Morrell, 50—Cave, J.

CERTIFICATE.

To remove Disqualifications of Bankrupt.]—The words "misfortune without any misconduct" in section 32, sub-section 2 (*b*), of the Bankruptcy Act, 1883—which provides for the granting of a certificate for the

removal of the disqualifications of a bankrupt—mean pure misfortune as distinguished from and without misconduct, and the word "misconduct" in that section is not to be interpreted with reference to section 28 of the Act, or confined to the "conduct" therein specified. The bankrupt, who was the editor of a newspaper, was indicted for a libel and sentenced to three months' imprisonment and to pay the costs of the prosecution. During the time he was in gaol all his property was sold under a bill of sale given for the purposes of the defence, and he subsequently presented his own petition. On appeal from a decision of the County Court Judge refusing a certificate under section 32, sub-section 2 (*b*), of the Bankruptcy Act, 1883.

Held: That the bankruptcy was caused by the libel, the sentence, and the imprisonment; that it was impossible to say that such bankruptcy was caused by misfortune without any misconduct on the bankrupt's part; and that the refusal of the certificate was right. *In re Burgess, Ex parte Burgess*, 4 Morrell, 186; 57 L. T. 200; 35 W. R. 702—D.

CHARGING ORDER.

A charging order upon shares, made under the statute 1 & 2 Vict. c. 110, s. 14, does not fall within section 45 of the Bankruptcy Act, 1883, and the words in the said section, "an execution against the goods of a debtor," which is to be completed by seizure and sale, do not include such an order. *In re Hutchinson, Ex parte Plowden & Co.*, 3 Morrell, 19; L. R. 16 Q. B. D. 515; 55 L. J. Q. B. 582; 54 L. T. 302; 34 W. R. 475—D.

"CHOSE IN ACTION."

Shares in a railway company are "things in action" within the meaning of section 44, sub-section (iii.) of the Bankruptcy Act, 1883, so as to be excepted from the doctrine of reputed ownership. Where a partner in a stockbroking firm purchased shares in a railway company with money of the firm, and subsequently deposited the share certificates with the firm's bankers as security or cover for advances made by them to the firm, and before notice of the deposit had been given to the railway company, the firm, and also the members of it, were adjudicated bankrupts.

Held: That the trustee in the bankruptcy was not entitled to such shares as being in the reputed ownership of the bankrupts within section 44, sub-section (iii.) of the Bankruptcy Act.

Quære: Whether the term "choses in action" does not now include all personal chattels not in possession.

The decision in *Colonial Bank* v. *Whinney* (see 2 Morrell, 234) reversed. *Colonial Bank* v. *Whinney*, 3 Morrell, 207; L. R. 11 App. Cas. 426; 56 L. J. Ch. 43; 55 L. T. 362; 34 W. R. 705—H. L.

COMMERCIAL TRAVELLER.

Where a bankrupt was a commercial traveller at an annual salary of 100*l.*, paid weekly, the engagement being terminable at a week's notice.

Held: That such bankrupt was in the receipt of a salary, within the meaning of section 53, sub-section (2), of the Bankruptcy Act, 1883, out of which the Court had power to direct payment of a certain sum by monthly instalments to the trustee in the bankruptcy, for the purpose of distribution amongst the creditors. *In re Brindley, Ex parte Brindley*, 4 Morrell, 104; 56 L. T. 498; 35 W. R. 596—D.

COMMITTAL.

Motion to Commit—Affidavit of Service.]—The motion to commit should refer to the affidavit of service. *In re Pearce, Ex parte the Board of Trade*, 1 Morrell, 111—Cave, J.

Substituted Service.]—In order to obtain an order for substituted service it must be shown that the person sought to be served knows of the motion and intentionally keeps out of the way. *In re Pearce, Ex parte the Board of Trade*, 1 Morrell, 135—Cave, J.

——Where a party desires to enforce by commitment in the High Court a judgment of a competent Court, he need not file an affidavit in denial of satisfaction. *In re Stone, Ex parte Nicholson*, 1 Morrell, 177—Cave, J.

Debtor retaining Possession of Premises.]—Where a debtor refused to deliver up possession of the premises occupied by him at the request of the trustee in bankruptcy, the Court made an order for his committal for contempt. *In re Cox, Ex parte the Trustee*, 2 Morrell, 23—Field, J.

Order to Pay by Instalments—"Means to Pay."]—For the purpose of determining whether a judgment debtor has had the "means" to pay the judgment debt, with the view of making an order for his committal under section 5, sub-section (2) of the Debtors Act, 1869, money derived from a gift may be taken into account. It is not necessary that the "means to pay" should have been derived from the debtor's earnings or from a fixed income. *In re Park, Ex parte Koster*, 2 Morrell, 35; L. R. 14 Q. B. D. 597; 54 L. J. Q. B. 389; 52 L. T. 946; 33 W. R. 606—C. A.

Married Women.]—A married woman cannot be committed to prison under section 5 of the Debtors Act, 1869, for non-payment of a judgment recovered against her in an action brought under section 1, sub-section (2) of the Married Women's Property Act, 1882. *In re Morley, Ex parte Morley, Scott* v. *Morley*, 4 Morrell, 286; L. R. 20 Q. B. D. 120; 36 W. R. 67—C. A.

Receiving Order in Lieu of.]—The Court has jurisdiction to make a receiving order, in lieu of a committal, against a judgment debtor, under section 103, sub-section (5) of the Bankruptcy Act, 1883, only on the application of a person who is strictly speaking a "judgment creditor." Such receiving order cannot be made, therefore, on the application of every person who is entitled to apply to the Court under section 5 of the Debtors Act, 1869. Where an order is made in the Divorce Court directing the co-respondent to pay to the husband, the petitioner in the suit, the amount given as damages forthwith for the purpose of settlement on the children of the marriage, such husband is not a "judgment creditor" of the co-respondent within the meaning of section 103, sub-section (5), of the Bankruptcy Act. Where a judgment debtor makes default in payment of the judgment debt, the Court has power of committal under section 5 of the Debtors Act, 1869, if proof is given that such debtor has had the means of paying part of the said debt, even though he has not had the means of paying the whole amount. *In re Fryer, Ex parte Fryer*, 3 Morrell, 231; L. R. 17 Q. B. D. 718; 55 L. J. Q. B. 478; 55 L. T. 276; 34 W. R. 766—C. A.

——Where the Judge of a County Court, not having jurisdiction in bankruptcy, at the hearing of a judgment summons for a committal, is of opinion that a receiving order should be made in lieu of a committal, and orders the matter to be transferred to the Bankruptcy Court under Rule 268 (1) (a) of the Bankruptcy Rules, 1885, notice of the subsequent proceedings under the order of transfer must be served on the judgment debtor. The Court of Bankruptcy in such a case is not bound to adopt the opinion of the County Court Judge, and to make a receiving order as a matter of course, but must exercise its own judicial discretion at the hearing. *In re Andrews, Ex parte Andrews*, 2 Morrell, 244; L. R. 15 Q. B. D. 335; 54 L. J. Q. B. 572—Cave, J.

——On December 30th, 1886, judgment for 33*l.* was recovered against the debtor, and in January, 1887, a judgment summons was issued. On February 11th, 1887, a receiving order in lieu of a committal was made against the debtor under section 103, sub-section (5), of the Bankruptcy Act, 1883. The debtor thereupon paid the debt, and the judgment

creditor consented to the receiving order being rescinded, but on application being made for that purpose, the County Court Judge held that the debtor had not shown that the consent of the creditors to such rescission had been obtained, and he declined to make any order.

Held: That the debtor was entitled to have the matter referred to the Registrar to report whether a majority of the creditors did assent or not.

Quære: Whether, where a receiving order in lieu of a committal is made, it is necessary that the consent of the creditors should be shown, if the debtor pays the judgment creditor and applies to rescind. *In re Hughes, Ex parte Hughes,* 4 Morrell, 236—D.

——The Judge of a County Court not having jurisdiction in bankruptcy made an order of committal against the appellant upon a judgment summons under section 5 of the Debtors Act, 1869. The judgment summons having by mistake been marked with the words "In bankruptcy," an appeal was brought to the Divisional Court.

Held: That no appeal could lie from the order complained of, at any rate to the Divisional Court in Bankruptcy.

Quære: Whether any appeal lies from a committal in the County Court under section 5. *In re Watkins, Ex parte Watkins,* 3 Morrell, 146—D.

Compare also cases under titles *Arrest—Attachment.*

COMPANY.

A "balance order" in respect of calls made on a contributory in the winding-up of a company, is not a "final judgment" within the meaning of section 4, sub-section 1 (g), of the Bankruptcy Act, 1883, and a bankruptcy notice cannot be issued in respect of such an order. *In re Tennant, Ex parte Grimwade,* 3 Morrell, 166; L. R. 17 Q. B. D. 357; 55 L. J. Q. B. 495—C. A.

——The power given by section 95 of the Companies Act to a liquidator to bring or defend any action, suit, or prosecution, or *other legal proceedings,* civil or criminal, in the name and on behalf of the company, includes the power to serve a bankruptcy notice upon a judgment debtor of such company under section 4, sub-section 1 (*g*), of the Bankruptcy Act, 1883. But the provisions of section 95 of the Companies Act must be strictly complied with, and the proceedings in connection with serving such bankruptcy notice must be taken "in the name and on behalf of the company," and not by the liquidator in his own name. *In re Winterbottom, Ex parte Winterbottom,* 4 Morrell, 5; L. R. 18 Q. B. D. 446; 56 L. J. Q. B. 238; 56 L. T. 168—D.

——On appeal from the rejection by the trustee in the bankruptcy of a

proof of debt carried in by the liquidator of a mutual assurance company for the sum of 85*l.*, the amount due from the bankrupts as contributors in respect of calls, and also for the estimated sum of 100*l.* for further calls which had accrued before the date of the receiving order, but had not been then ascertained, the County Court Judge allowed the proof as to the 85*l.*, and directed the proof as to the 100*l.* to stand over. On July 30th, 1886, proof for the ascertained sum of 74*l.* in substitution for the 100*l.* was tendered, and was rejected by the trustee on the ground (1) that the claim was made too late by reason of the fact that on July 9th, 1886, notice to declare a dividend had been inserted in the *Gazette*, by which July 28th was specified as the last day for claims to be sent in; and (2) that the alleged claim had already been adjudicated upon by the Court.

Held: That the notice in question did not prevent the creditor from making the claim; and that the proof in respect of the further calls was not *res judicata*, and must be allowed. *In re Shepherd & Leech, Ex parte Whitehaven Mutual Insurance Society*, 4 Morrell, 130—D.

COMPOSITION.

It is the intention of the Legislature that proposals for a composition or scheme of arrangement shall only be entertained after a receiving order has been made. *In re Dixon & Wilson, Ex parte Dixon & Wilson*, 1 Morrell, 98; L. R. 13 Q. B. D. 118; 50 L. J. Ch. 769; 50 L. T. 414; 32 W. R. 837—C. A.

——The fact that before the presentation of a bankruptcy petition against the debtor, a large number of the creditors have assented to a deed of arrangement, is not a "sufficient cause" within the meaning of section 7, sub-section (3), of the Bankruptcy Act, 1883, for dismissing such petition presented by a dissenting creditor, however beneficial to the creditors the terms of such arrangement may be; and, in consequence, there is no jurisdiction to adjourn generally the hearing of such petition with a view to its ultimate dismissal, if the arrangement should be found to work well. The case of *In re Dixon & Wilson, Ex parte Dixon & Wilson* (see above), approved and explained to the effect that the decision there did not depend upon the particular terms of the arrangement, but upon the fact that such arrangement was made at the time, and in the manner, and by the persons by whom it was made. *In re Watson & Smith, Ex parte Oram*, 2 Morrell, 199; L. R. 15 Q. B. D. 399; 52 L. T. 785; 33 W. R. 890—C. A.

Approval—Discretion of Registrar.]—Where the creditors of a bankrupt after adjudication by special resolution resolve under section 23 of

the Bankruptcy Act, 1883, to entertain a proposal for a composition or scheme of arrangement of the bankrupt's affairs, such special resolution must be confirmed at a second meeting of the creditors in the same manner as a special resolution under section 18 of the Act, resolving before adjudication to entertain a like proposal. Where application is made to the Court for approval of a composition or scheme the Registrar must exercise a judicial discretion on the whole case, and the Court of Appeal will not disapprove of his decision except on the clearest ground. The Registrar ought to look both at the interests of the creditors and the conduct of the debtor, and so far as the effects of the approval of the composition or scheme will be to release the debtor from liability, his conduct ought to be carefully examined: but regard must also be had for the interests of the creditors, and if the composition or scheme is clearly the best thing for the creditors, the Registrar ought to have due regard for that fact. The Registrar must look closely into all the circumstances and exercise his discretion thereon. *In re Genese, Ex parte Kearsley & Co.*, 3 Morrell, 274; L. R. 18 Q. B. D. 168; 56 L. J. Q. B. 220; 56 L. T. 79—C. A.

Approval — Court Fees.]—The proposal put forward by a debtor provided that all the property of such debtor divisible among his creditors should vest in a trustee, and, subject to the provisions of the scheme, be administered according to the law of bankruptcy: that, in addition, the sum of 100*l.* a year out of a pension of 297*l.* belonging to the debtor should be paid to the trustee under the scheme until, with the rest of the debtor's property, all the costs relating to the bankruptcy should have been paid, and the creditors should have received 15*s.* in the pound upon the amount of their debts: that after payment of 15*s.* in the pound to the creditors upon their debts and of all the costs, charges, and expenses, the trustee should hand over to the debtor the surplus of the estate: and that as from the date of the confirmation of the scheme by the Court the debtor should be released and discharged from all debts provable under the bankruptcy. On the debtor applying to the Court for its approval, the Registrar was in doubt whether such proposal required to be stamped as a composition or a scheme of arrangement, and the question was referred to the Judge for decision.

Held: That the arrangement in question had more of the elements of a scheme than of a composition: and that the fee must be paid on the estimated value of the 100*l.* a year as an asset. *In re Griffith*, 3 Morrell, 111—Cave, J.

Approval—Business carried on by Official Receiver.]—Where, before a composition is approved by the Court, the business of the debtor is

carried on by the official receiver, who makes payments out of his own pocket, and incurs personal liability for the purpose of carrying on such business, the proper order for the Court to make on approving the composition is, that the official receiver shall forthwith deliver up possession of the debtor's estate to the trustee under the composition, and that such trustee shall pay to the official receiver what may be found due to him out of the first assets which come into his hands. *In re Taylor, Ex parte the Board of Trade*, 1 Morrell, 264; 51 L. T. 711—D.

Approval—Discretion—Rash and Hazardous Speculations.]—A Court to whom application is made to approve a composition accepted by the creditors of a debtor under section 18 of the Bankruptcy Act, 1883, must exercise its own discretion in determining whether such composition is reasonable and calculated to benefit the general body of creditors, and if such Court is not satisfied with all the circumstances attending the debtor's conduct and the acceptance of the composition, it is its duty to refuse its approval. In a case where a debtor within the space of about eighteen months had allowed a debt due to him from a person whom he knew to be in pecuniary difficulties to increase from 32,000*l.* to more than 60,000*l.*, and it appeared that to the amount of 11,000*l.* this increase was due to accommodation bills, and such debtor subsequently stopped payment and presented a bankruptcy petition, and a composition was accepted by the creditors.

Held: That the debtor had been guilty of rash and hazardous speculations, and that, even if the composition were reasonable, the Court ought to refuse its approval. *In re Rogers, Ex parte Rogers*, 1 Morrell, 159; L. R. 13 Q. B. D. 438; 33 W. R. 354—D.

——In a case where a debtor, as the managing director of a mining company, the mines being undeveloped, advanced both his own and borrowed money to the company, which subsequently became insolvent, and a petition in bankruptcy was presented against the debtor, and a composition accepted by his creditors.

Held: That the debtor had been guilty of rash and hazardous speculations; and that the Registrar was quite right in refusing to approve the composition offered. *In re Young, Ex parte Young*, 2 Morrell, 37—C. A.

——The term "rash and hazardous speculations" in section 28, subsection 3 (d), of the Bankruptcy Act, 1883, is not confined to rash and hazardous speculations in trade, but the term also includes other speculations of a rash and hazardous nature, such as gambling, betting, and Stock Exchange transactions. On the question of granting or refusing

the approval of the Court to a composition or scheme of arrangement the Registrar must not take a one-sided view, but look at all the circumstances. He must consider, on the one side, the conduct of the debtor, and on the other, the interests of the creditors, and he must exercise his discretion both in regard to his duty to the public on the one hand and his duty to the creditors on the other. The Registrar must consider all the circumstances and exercise his discretion thereon. *In re Barlow, Ex parte Thornber,* 3 Morrell, 304—C. A.

Report of Official Receiver.—On a contention raised that although for the purposes of the discharge of a bankrupt under section 28 of the Bankruptcy Act, 1883, the report of the official receiver is *primâ facie* evidence of the truth of the statements therein contained, nevertheless for the purposes of the approval of a composition or scheme under section 18, sub-section (6), of the Act, such report is not made *primâ facie* evidence, and that the Registrar ought not to refuse to approve a composition without having the facts mentioned in section 28, sub-section (3), proved by other evidence.

Held: That the report of the official receiver is *primâ facie* evidence for the purposes of section 18, sub-section (6), and that the proof of the facts referred to in section 28, sub-section (3), which is sufficient in the case of the discharge of a bankrupt under that section, would also be sufficient proof in the case of the appoval of the composition or scheme under section 18, sub-section (6).

Per BRETT, M. R.—That in deciding as to the granting or refusing the discharge of a bankrupt or the approval of a composition or scheme of arrangement, the question whether the debtor has kept proper books is one of primary importance.

That it is no ground to set aside the decision of the Registrar refusing to approve a composition because a large majority of the creditors of a debtor are desirous of accepting it, but that the object of the Bankruptcy Act, 1883, being to prevent reckless debtors from escaping the consequences of their conduct by the payment of a nominal dividend, it is the duty of the Court to protect such creditors from themselves. *In re Wallace, Ex parte Campbell,* 2 Morrell, 167; L. R. 15 Q. B. D. 213; 54 L. J. Q. B. 382; 53 L. T. 208—C. A.

——Where on application to the Court to approve a composition the official receiver reported that he had a sufficient sum in his hands for payment thereof, such report being founded on the estimate given by the debtor in his statement of affairs, which subsequently proved to be wrong, and an order was in consequence asked for against the official receiver personally to make up the required sum.

Held: That the applicants were not entitled to an order against the official receiver personally.

That if a debtor thus forms a wrong estimate of his position, unless the amount found to be necessary to pay the composition agreed upon is procured, the proper order for the Court to make is one adjudging such debtor bankrupt and annulling the composition under section 18, subsection (11), of the Bankruptcy Act, 1883. *In re Webster, Ex parte Foster & Co.*, 3 Morrell, 132—Cave, J.

Composition Deed.—Where a debtor against whom no proceedings in bankruptcy had been taken entered into an arrangement with his creditors by which he agreed to pay 10*s.* in the pound within six years to any creditors signing the deed of arrangement and the creditors covenanted by the said deed not to sue the debtor, or to enforce any judgment already obtained, and to forego all their claims on him if the provisions of the deed were carried out: which deed was signed by a creditor who had previously obtained a final judgment against the debtor: and after such creditor had signed three other creditors signed the deed, who it was subsequently discovered had received from the debtor's brother, with the knowledge of the debtor, certain other payments over and above the 10*s.* in the pound secured by the deed.

Held: That the principle laid down in the case of *Dauglish* v. *Tennant*, (L. R. 2 Q. B. 49) applies to all composition deeds whether under a statute or not: that it is an implied condition in all such deeds that all the creditors shall come into the arrangement on perfectly equal terms: and that the order of the Registrar refusing to set aside a bankruptcy notice served upon the debtor by the creditor who had obtained a final judgment was a right order, such creditor being no longer bound by the deed. *In re Milner, Ex parte Milner*, 2 Morrell, 190; L. R. 15 Q. B. D. 605; 54 L. J. Q. B. 425; 33 W. R. 867—C. A.

Power of Court to enforce.]—The Court has the same power to enforce the payment of a composition accepted after bankruptcy adjudication under section 23 of the Bankruptcy Act, 1883, as it has to enforce the payment of a composition entered into before adjudication under section 18 of the Act. *In re Lazarus, Ex parte Godfrey*, 4 Morrell, L. R. 121; L. R. 18 Q. B. D. 670; 56 L. J. Q. B. 369; 35 W. R. 533—C. A.

See also cases under title *Scheme of Arrangement.*

COMPROMISE.

By Official Receiver.] — A debtor on May 6th presented his own petition upon which a receiving order was made; and on May 7th the official receiver took possession of the debtor's property. On June 30th

a compromise was entered into between the official receiver and two holders of bills of sale over the property of the debtor. On July 9th the debtor was adjudicated bankrupt; and on July 23rd the certificate of approval of the trustee in the bankruptcy was granted by the Board of Trade. The trustee subsequently applied to the Court to set aside the compromise.

Held: That on its appearing that the official receiver had the permission of the Board of Trade to make this compromise, the application of the trustee must be refused. *In re Johnstone, Ex parte Singleton*, 2 Morrell, 206—D.

By Trustee.]—The father of a bankrupt carried in two separate proofs against the estate for 3000*l.*, which were respectively rejected by the trustee to the extent of 2000*l.*, and on the application of another creditor were subsequently expunged in the County Court. The creditor appealed; but while the appeals were pending, a compromise was entered into, according to the terms of which it was agreed that the claim of the creditor should be reduced to the sum of 1380*l.*, and that all costs should be paid by the trustee. On application to the County Court Judge for an order for taxation in accordance with the terms of this compromise, it was refused.

Held (on appeal): That the proper course was to come to the Court for its consent to the arrangement; and that the refusal of the County Court Judge to grant an order for taxation under the circumstances was right. *In re Green, Ex parte Edmunds*, 2 Morrell, 294; 53 L. T. 967—D.

"CONDUCT" OF BANKRUPT.

On application by a bankrupt for his discharge, under section 28 of the Bankruptcy Act, 1883, the Court has no jurisdiction to take into consideration as "conduct," a refusal on the part of such bankrupt to submit to a medical examination, with a view to life insurance, for the purpose of enabling the trustee in the bankruptcy to realise to better advantage a contingent reversionary interest of the said bankrupt in certain property.

——The word "conduct," in section 28, does not include general misconduct, but if not covered by any of the specific instances mentioned in that section, it must be regarded with reference to section 24 of the Act, which defines the duties of the debtor as to the realisation and distribution of his property. *In re Betts & Block, Ex parte the Board of Trade*, 4 Morrell, 170; L. R. 19 Q. B. D. 39; 56 L. J. Q. B. 370; 56 L. T. 804; 35 W. R. 530—C. A.

——The words "misfortune, without any misconduct," in section 32,

sub-section 2 (b), of the Bankruptcy Act, 1883—which provides for the granting of a certificate for the removal of the disqualifications of a bankrupt—mean pure misfortune as distinguished from and without misconduct; and the word "misconduct" in that section is not to be interpreted with reference to section 28 of the Act, or confined to the "conduct" therein specified. *In re Burgess, Ex parte Burgess*, 4 Morrell, 186; 57 L. T. 200; 35 W. R. 702—D.

COSTS.

Of Trustee.]—A trustee in bankruptcy who is served with notice of an appeal, and who appears and only asks for his costs, will not be allowed his costs of appearance. *In re Arden, Ex parte Arden*, 2 Morrell, 1; L. R. 14 Q. B. D. 121; 51 L. T. 712; 33 W. R. 460—D.

——The provisions of Rules 78 to 81 of the Bankruptcy Rules, 1870 (*compare Nos.* 65 *to* 69 *of the Bankruptcy Rules*, 1883), were not intended to fetter the Court in cases where an application has been made to the Court by a mortgagee of property of the bankrupt for a sale of such property as provided by the rules, so as (1) to compel the Court to give the conduct of such sale to the trustee in the bankruptcy: or (2) to compel the Court to give the trustee a first charge on the proceeds of the sale for his costs and expenses in cases where the conduct of the sale has been taken away from him. *In re Jordan, Ex parte Lloyd's Banking Co.*, 1 Morrell, 41; L. R. 13 Q. B. D. 228; 53 L. J. Q. B. 554; 50 L. T. 594; 33 W. R. 153—Cave, J.

Against Trustee personally.]—Where, in a case of any legal difficulty, a trustee in a bankruptcy has obtained the decision of the Court, if such trustee appeals from the decision given and does not succeed, the order for costs will be made against him personally. A trustee, therefore, before appealing from such decision ought to obtain the consent of the creditors to do so, and also to obtain a guarantee from such creditors for his own protection in the event of the appeal being decided against him. *In re Malden, Gibson & Co., Ex parte James*, 3 Morrell, 185; 55 L. T. 708—D.

——Although by section 89, sub-section (1), of the Bankruptcy Act, 1883, a trustee shall, in the administration of the property of the bankrupt and in the distribution thereof amongst his creditors, have regard to any directions which may be given by the committee of inspection; nevertheless, if such trustee unreasonably and vexatiously rejects a proof of debt, the Court will order him to pay personally the costs occasioned by such rejection, even though in so doing he acted under the

directions of the committee. Where the view taken by a committee of inspection upon any question is frivolous and wasteful of the assets, the trustee is not justified in acting upon it, and cannot set up the directions of such committee as a defence against a personal order upon him to pay costs. *In re Smith, Ex parte Brown*, 3 Morrell, 202; L. R. 17 Q. B. D. 488—C. A.

——Where notice had been served on the trustee requiring him to decide whether he would disclaim or not within twenty-eight days in accordance with the terms of section 55, sub-section 4, of the Bankruptcy Act, 1883, and the trustee did not within that time signify his intention as required, leave to disclaim given only on condition of payment of a month's rent to the landlord, such rent, together with the costs of the landlord, to be paid by the trustee personally. *In re Page, Ex parte the Trustee*, 1 Morrell, 287; L. R. 14 Q. B. D. 401; 33 W. R. 825—Cave, J.

——An interlocutory order for an injunction and receiver having been made against the defendants in an action, they gave notice of appeal, and shortly afterwards became bankrupt. An order was made for carrying on the proceedings against their trustee. The trustee gave notice to the plaintiff that he should not proceed with the appeal. Shortly after this the trustee entered an appearance and called for a statement of claim. He declined to undertake to pay the costs of the appeal incurred by the plaintiff before the notice that the appeal would not be proceeded with, and the appeal came on that the question as to the costs might be decided.

Held: That the appeal must be dismissed with costs to be paid by the trustee, for that having adopted the defence of the bankrupts he had placed himself in their position as to the whole of the action, and could not reject part of the proceedings in it. *Borneman* v. *Wilson*, L. R. 28 Ch. D. 53; 54 L. J. Ch. 631; 51 L. T. 728; 33 W. R. 141—C. A.

Of Trustee under Deed of Assignment.]—Where a deed of assignment of the whole of their property executed by the debtors for the benefit of their creditors generally contained a provision for the payment out of the assets in the first instance of the costs and expenses of the trustee under the said deed of assignment, such trustee was not entitled (on the debtors being adjudged bankrupt upon a petition founded on the deed as an act of bankruptcy) to retain as against the trustee in the bankruptcy assets in his hands, on the ground that a sum exceeding the said assets was due to him for work and labour done. *In re J. and H. Richards, Ex parte the Official Receiver*, 1 Morrell, 242; 32 W. R. 1001—Wills, J.

Of Official Receiver.]—An official receiver ought not to appear at the hearing of an appeal from a receiving order unless it is necessary for him to do so for the purpose of bringing some special circumstance to the notice of the Court; and this special circumstance the Court will take into consideration when the costs are applied for. *In re Dixon & Wilson, Ex parte Dixon & Wilson*, 1 Morrell, 98; L. R. 13 Q. B. D. 118; 53 L. J. Ch. 769; 50 L. T. 414; 32 W. R. 837—C. A.

——When the official receiver has made his report upon a composition or scheme of arrangement his duty is complete, and, except under very particular circumstances, he should not appear on an appeal: if the appearance of the official receiver is essential, the Court will allow the appeal to stand over for that purpose: and unless his appearance is requisite no costs will be allowed to him. *In re Reed, Bowen & Co., Ex parte Reed, Bowen & Co.*, 3 Morrell, 90; L. R. 17 Q. B. D. 244; 55 L. J. Q. B. 244; 34 W. R. 493—C. A.

——The official receiver will not be allowed his costs of appeal, even if he was served with notice of appeal, unless his appearance was necessary. *In re White, Winter & Co., Ex parte White, Winter & Co.*, 2 Morrell, 42; L. R. 14 Q. B. D. 600—C. A.

——The official receiver acting as trustee of an estate being administered in a summary manner under section 121 of the Bankruptcy Act, 1883, on an unsuccessful motion by him was ordered personally to pay the costs of the respondent, with liberty to take the costs out of the estate, if any. *In re Glanville, Ex parte the Trustee*, 2 Morrell, 71; 33 W. R. 523—Cave, J.; and compare *In re Thomas, Ex parte Ystradfodwg Local Board*, 4 Morrell, 295—Cave, J.

——The effect of section 116, sub-section (2), of the Bankruptcy Act, 1883, which provides that no official receiver "shall, during his continuance in office, either directly or indirectly, by himself, his clerk, or partner, act as solicitor in any proceeding in bankruptcy," is not limited to cases of the official receiver acting as solicitor by himself, his clerk or partner, for another person, or on an application for the benefit of the estate, but extends also to cases where the official receiver is acting as solicitor for himself and conducting a case on his own behalf. *In re Taylor, Ex parte the Official Receiver*, 2 Morrell, 127—D.

—— An order made by a county court, on the application of the official receiver, setting aside a payment made by a debtor as a fraudulent preference having been reversed on appeal,

Held: That the costs of the appellants and of the official receiver in

both courts must be paid out of the debtor's assets, the costs of the appellants having priority. *In re Dale, Ex parte Leicestershire Banking Co.*, L. R. 14 Q. B. D. 48; 33 W. R. 354—D.

——In June, 1886, the debtor executed an assignment for the benefit of his creditors, under which the applicant was employed to prepare a statement of affairs, and it appearing that the landlord was threatening a distress for rent, the applicant upon the instructions of the creditors paid the amount due. In July, 1886, a receiving order was made against the debtor, and repayment of the amount so paid by the applicant for the benefit of the creditors was refused by the official receiver without an order of the Court.

Held: (1) That under the circumstances and looking to the fact that a request signed by a majority in number and value of the creditors had been presented to the official receiver stating their willingness that repayment should be allowed, the Court would make the order.

(2) But that the official receiver would be entitled to retain his costs of the hearing out of the amount and hand over the balance to the applicant. *In re Ayshford, Ex parte Lovering*, 4 Morrell, 164; 35 W. R. 652—Cave, J.

Of Solicitor.]—Where, after the presentation of the bankruptcy petition, proceedings are carried on by a debtor, from which the official receiver comes to a clear conclusion that substantial advantage has accrued to the debtor's estate, such ought to be looked upon in the light of salvage, and the costs attendant upon the proceedings in question should be allowed out of the estate. *In re F. H. Johnstone, Ex parte Angier*, 1 Morrell, 213; 32 W. R. 1001—Cave, J.

——An application by the Board of Trade for a review of taxation of the costs of a solicitor under Rule 104 of the Bankruptcy Rules, 1883, can only be made for the benefit of the estate; and where there is no estate and no trustee such rule will not apply. *In re Rodway, Ex parte Phillips*, 1 Morrell, 228—Wills, J. See Rule 124; and compare Rule 209, Bankruptcy Rules, 1886.

——Where an agreement entered into by a solicitor to conduct certain bankruptcy proceedings on the terms that his costs should not exceed 10*l.* had been declared void by the County Court Judge on the application of such solicitor, and an appeal from this decision having been brought to the Divisional Court in Bankruptcy, the preliminary objection was taken that the Court, sitting as a Court of Appeal in bankruptcy matters only, had no jurisdiction to deal with the question at all.

Held: That the Court had jurisdiction to hear the appeal.

——That the fact that the agreement did not contain a provision that the solicitor so employed might continue the bankruptcy proceedings to the end, did not make such agreement unfair or unreasonable, and that the order of the County Court Judge setting aside such agreement must be reversed. *In re Owen, Ex parte Peyton*, 2 Morrell, 87 ; 52 L. T. 628—D.

—— On the presentation of a bankruptcy petition against a debtor and an order for the appointment of an interim receiver having been made, such debtor instructed his solicitor to oppose the petition, and to move to rescind the interim order, and then paid to such solicitor at his request 25*l.* on account of costs of counsel's fees and other expenses for that purpose. The application to rescind the interim order was dismissed, and the debtor was subsequently adjudicated bankrupt. The trustee in the bankruptcy thereupon claimed the 25*l.* from the solicitor as money received by him from the debtor with knowledge of the act of bankruptcy on which the receiving order was made.

Held: That the application of the trustee must be refused; that it was right that a debtor should have legal assistance and advice against a bankruptcy petition; and that a debtor would be practically defenceless if money paid to a solicitor for services rendered on such an occasion could afterwards be recovered by the trustee. *In re Sinclair, Ex parte Payne*, 2 Morrell, 255; L. R. 15 Q. B. D. 616; 53 L. T. 767—Cave, J.

——Where in an ordinary taxation of the costs of the solicitor to the trustee in the bankruptcy, the amount of the solicitor's bill is reduced by more than one-sixth, there is no rule in the Court of Bankruptcy that such solicitor shall pay the costs of the taxation. The provisions of the Attorneys and Solicitors Act (6 & 7 Vict. c. 73) do not apply in an ordinary reference to tax such costs, but the taxation is regulated by the practice of the Court of Bankruptcy. *In re Marsh, Ex parte Marsh*, 2 Morrell, 232; L. R. 15 Q. B. D. 340; 54 L. J. Q. B. 557; 53 L. T. 418—C. A.

The father of a bankrupt carried in two separate proofs against the estate for 3,000*l.*, which were respectively rejected by the trustee to the extent of 2,000*l.*, and on the application of another creditor were subsequently expunged in the County Court. The creditor appealed, but while the appeals were pending, a compromise was entered into according to the terms of which it was agreed that the claim of the creditor should be reduced to the sum of 1,380*l.*, and that all costs should be paid by the trustee. On application to the County Court Judge for an order

for taxation in accordance with the terms of this compromise, it was refused.

Held (on appeal): That the proper course was to come to the Court for its consent to the arrangement; and that the refusal of the County Court Judge to grant an order for taxation under the circumstances was right. *In re Green, Ex parte Edmunds*, 2 Morrell, 294; 53 L. T. 967—D.

——On August 20th, 1885, in accordance with a resolution passed at a meeting of creditors, the debtor executed a deed of assignment vesting his estate in a trustee for their benefit. On October 28th, 1885, a bankruptcy petition was presented against the debtor, the act of bankruptcy alleged being the execution of the deed of assignment. On October 31st, 1885, the trustee under the deed paid out of assets in his hands the sum of 20*l.* 7*s.* 8*d.* to a firm of solicitors, being the amount of their bill of costs incurred in connection with the meeting of creditors and in preparing the deed of assignment, and also in collecting certain book debts. On January 20th, 1886, a receiving order was made against the debtor, and the trustee under the deed sent to the official receiver the balance of assets in his hands after deducting the amount so paid to the solicitors together with an account of receipts and payments in connection with the estate. The trustee appointed in the bankruptcy applied for an order for payment of the 20*l.* 7*s.* 8*d.*

Held: That the application must be granted; but that certain items for collecting book debts amounting together to 2*l.* would, under the circumstances, be allowed, and an order made for payment of 18*l.* 7*s.* 8*d.* *In re Forster, Ex parte Rawlings*, 4 Morrell, 292; 36 W. R. 144—Cave, J.

——*As between Solicitor and Client.*]—The Court by three orders gave costs as "between party and party." Subsequently an application was made that such costs might be "as between solicitor and client;" which application was refused.

Held (on appeal): That the application ought to have been made to the Court at the time when the costs were awarded; and that the words of Rule 98 of the Bankruptcy Rules, 1883—"the Court in awarding costs"—mean at the time when the Court makes the order. *In re Angell, Ex parte Shoolbred*, 2 Morrell, 5; L. R. 14 Q. B. D. 298; 54 L. J. Q. B. 87; 51 L. T. 678; 33 W. R. 202—C. A.

——Where a form of order by consent in a motion contained an agreement by one of the parties—the trustee in the bankruptcy—to pay the costs of the other "as between solicitor and client,"

Held: That such a form of order could not be approved by the Court. *In re Guy, Ex parte Scantlebury,* 4 Morrell, 300—Cave, J.

Of Amendment.]—At the hearing of a bankruptcy petition the objection was raised on behalf of the debtor that the petitioning creditor was a mere trustee for his father, and the registrar after hearing the evidence having come to that conclusion, the petition was dismissed without leave to amend.

Held (on appeal): That although the registrar was justified on the case before him in coming to the conclusion to which he did, yet as a matter of indulgence leave to amend the petition by joining the father would be granted.

But such leave must be subject to the condition that all costs thrown away by his not being joined should be paid by the father within one month, including the costs of the appeal. *In re Ellis, Ex parte Hinshelwood,* 4 Morrell, 283—C. A.

Of Applicant.]—The bankrupts were stockbrokers who had been employed by the applicant to buy certain specific shares for him and had received payment for the same. These shares with others were deposited by the bankrupts with B. & Co., as security for an advance. When the bankruptcy became known B. & Co. sold the shares, reimbursed themselves, and handed over the balance to the trustee. Upon the applicant sending in a claim for the balance another claimant retired.

Held: That the money might be paid over to the applicant on the terms that his solicitor would give a personal undertaking to repay so much as the Court might order at any time within three years.

That the costs of the applicant must be borne by him, since it would be unjust that the expense of enforcing his claim should be borne by the general body of the creditors. *In re Blakeway, Ex parte Rankart,* 52 L. T. 630—Cave, J.

Where an application was made by the son and daughter of a bankrupt for an order to restrain the trustee in the bankruptcy from selling and for delivery to the applicants of certain goods which they claimed as belonging to them as a gift from their father, and such application was dismissed,

Held: That although there was not the slightest doubt but that the claim of the applicants was made in the utmost good faith and it was impossible not to feel sympathy with them, yet the general rule as to costs could not be departed from, and the application must be refused with costs. *In re Ridgway, Ex parte Ridgways,* 2 Morrell, 248—Cave, J.

Of former Applications Unpaid.]—Although it is no good reason for dismissing an application made in one matter, that costs ordered to be paid in a previous application in another matter substantially different have not been paid; yet the Court will not be bound to hear a subsequent application made to it unless the costs of a previous application in the same matter, which have been ordered to be paid by the applicant, have been settled. *In re Grepe, Ex parte Grepe*, 2 Morrell, 298—Cave, J.

Of Execution.]—The meaning to be attached to the words "costs of the execution" in sub-section 1 of section 46 of the Bankruptcy Act, 1883, is different to the meaning to be attached to the same words in sub-section 2 of the same section. Under the words "costs of the execution" in sub-section 1 the sheriff is not entitled to "poundage." *In re W. & J. Ludford*, 1 Morrell 131; L. R. 13 Q. B. D. 415; 53 L. J. Q. B. 418; 51 L. T. 240; 33 W. R. 152—Cave, J.

Of Public Examination.]—The words, "any proceeding in Court" in section 105, sub-section 1, of the Bankruptcy Act, 1883, do not include a second meeting of the creditors under a bankruptcy petition, summoned for the purpose of confirming a scheme of arrangement of the debtor's affairs accepted at the first meeting. The Court has in consequence no power to order the costs of the petitioner incidental to such second meeting to be paid out of the debtor's estate. But the words do include the public examination of the debtor, and the Court has power to order costs incidental to such public examination to be paid out of the estate. *In re Strand, Ex parte The Board of Trade and The Official Receiver*, 1 Morrell, 196; L. R. 13 Q. B. D. 492; 53 L. J. Q. B. 563—D.

Of Shorthand Writer's Notes.]—As a general rule the application to allow the costs of shorthand writer's notes of evidence as the costs of a successful appellant should be made at the hearing, but the mere omission to make the application then does not prevent its being made subsequently. *Semble*, if the application is made on a subsequent day, and is successful, the Court ought to make the applicant pay the costs of the application, as they were caused by his own omission. Where the shorthand writer is appointed at the instance of one party, he cannot recover the costs of the notes unless under special circumstances. Where the appointment is made by both parties, the costs should be paid by the unsuccessful party. *In re Day, Ex parte Steed*, 1 Morrell, 251; 33 W. R. 80—Cave, J.

It is the invariable practice of the Bankruptcy Court to refuse the costs of shorthand writer's notes unless the application is made at the

commencement of the case. *In re Gillespie, Ex parte Reid,* 33 W. R. 707—Cave, J. See "Regulations," March 25th, 1885, Rule 9.

Against Undischarged Bankrupt.]—The Court has power to give costs against an undischarged bankrupt, and in a case in which it thinks right it will exercise that power. *In re Payne, Ex parte Castle Mail Packet Company,* 3 Morrell, 270; L. R. 18 Q. B. D. 154; 35 W. R. 82—C. A.

Effect of Receiving Order.]—That a receiving order in bankruptcy has been made against a plaintiff is no ground for requiring him to give security for costs. *Rhodes* v. *Dawson,* L. R. 16 Q. B. D. 548; 55 L. J. Q. B. 134; 34 W. R. 340—C. A.

When Appeal out of Time.]—As a matter of courtesy, the solicitor of a respondent, if he is aware of a preliminary objection to an appeal, ought as early as possible to give notice to his opponent of such preliminary objection. If, however, the notice is not given, and the appeal is dismissed on the preliminary objection, such omission to give notice is no reason for depriving the respondent of the costs of the appeal. *In re Mundy, Ex parte Stead,* 2 Morrell, 227; L. R. 15 Q. B. D. 338; 53 L. T. 655—C. A.

Proof for.]—On July 15th, 1884, an order was made by consent by which all matters in dispute in an action were referred to arbitration, the costs to be in the discretion of the said arbitrator. On November 15th, 1884, during the continuance of the arbitration proceedings, the defendant debtor became bankrupt, and on January 21st, 1885, the trustee in the bankruptcy wrote to the arbitrator as follows:—"I give you notice that I as trustee deny any agreement of reference or that any award therein is or will be binding on me, and so far as I have the power I revoke your authority." On February 26th, 1885, the arbitrator gave his decision, by which he awarded to the plaintiff in the action a certain sum, and ordered that all costs should be paid by the defendant. A proof for the said costs having been rejected by the trustee in the bankruptcy and also by the County Court Judge,

Held (on appeal): That the bankruptcy did not operate as a revocation of the submission: that the trustee had no power to revoke the authority: and that the creditor was entitled to prove for the costs in question. *In re Smith, Ex parte Edwards,* 3 Morrell, 179—D.

——On December 18th, 1886, a receiving order was made against the debtor. On December 20th, 1886, verdict and judgment for the defendants was given in an action previously brought by the debtor. On February 6th, 1887, a proof for the costs in the action was tendered by the

defendants against the estate, and at a subsequent meeting of creditors a proposal of the debtor for a scheme of arrangement was rejected by reason of the vote given by the defendants at the meeting, and the debtor became bankrupt.

Held: (1) That under the circumstances the bankrupt had *locus standi* to apply to the Court under Rule 25 of the Second Schedule to the Bankruptcy Act, 1883, to expunge the proof.

(2) That the debt for which proof was made was not a debt provable in the bankruptcy, and that the proof must therefore be expunged. *In re Bluck, Ex parte Bluck*, 4 Morrell, 273; 56 L. J. Q. B. 607; 57 L. T. 419; 35 W. R. 720—Cave, J.

Order for Payment of—"Final Judgment."]—The fact that an order has been made against a defendant requiring him to pay the taxed costs in an action within a specified time, does not constitute such order a "final judgment" within the meaning of section 4, sub-section 1 (g), of the Bankruptcy Act, 1883, so as to entitle the plaintiff in the event of the defendant failing to comply with the terms of the order to obtain a bankruptcy notice against the defendant founded on the order. *In re Cohen, Ex parte Schmitz*, 1 Morrell, 55; L. R. 12 Q. B. D. 509; 53 L. J. Ch. 1168; 50 L. T. 747; 32 W. R. 812—C. A.

Payment by Instalments.]—The plaintiff in an action in the Queen's Bench Division of the High Court of Justice obtained an order against the defendant for the payment of certain costs. Subsequently, on the application of the plaintiff, a judgment summons under the Debtors Act, 1869, was issued out of the Brentford County Court asking for an order for the payment by instalments of the sum due. The County Court Judge refused to make the order, on the ground that he had no jurisdiction to interfere with the order of a Superior Court for payment of a larger sum.

Held: That the County Court, not being a Court within the London Bankruptcy District, had power to enforce such an order or judgment of the High Court by directing payment thereof by instalments.

But the County Court would have no power to vary or rescind an order made by the Superior Court for the payment by instalments of a judgment debt, as in such a case the Superior Court would have already dealt with the question of the debtor's means.

The case of *Washer* v. *Elliott* (1 C. P. D. 169; 45 L. J. C. P. 144; 34 L. T. 756; 24 W. R. 432) explained. *In re Ives, Ex parte Addington*, 3 Morrell, 83; L. R. 16 Q. B. D. 665; 55 L. J. Q. B. 246; 34 W. R. 593—Cave, J.

COUNTERCLAIM.—See *Set-off.*

COUNTY COURT.

Jurisdiction of.]—By the provisions of sections 100 and 102 of the Bankruptcy Act, 1883, which gave to a County Court "for the purposes of its bankruptcy jurisdiction, in addition to the ordinary powers of the Court all the powers and jurisdiction of the High Court," and also "full power to decide all questions of priorities, and all questions whatsoever whether of law or fact which may arise in any case of bankruptcy," a County Court has no jurisdiction or power to restrain an action in the High Court brought against the trustee of a debtor adjudicated bankrupt in such County Court. *In re Barnett, Ex parte Reynolds & Co.*, 2 Morrell, 147; L. R. 15 Q. B. D. 169; 54 L. J. Q. B. 354; 53 L. T. 448; 33 W. R. 715—C. A.

——On June 8th, 1885, the manager of the debtor, without his knowledge, communicated to a firm of corn-factors, to whom the debtor was indebted for wheat then in his stores, the fact that the debtor was in difficulties, and the firm thereupon bought from the manager all the wheat in the debtor's stores on the usual credit terms. On the same day the debtor sent out by post from another place notices of suspension of payment, which were delivered on the following morning to the creditors and also to the debtor's manager. On the facts of the sale of the wheat coming to the knowledge of the debtor he repudiated the transaction, and it was subsequently set aside by the County Court Judge. At the hearing it was objected that the claim did not arise out of the bankruptcy, and as the amount in dispute exceeded 200*l.*, and all parties did not consent, the County Court had no jurisdiction.

Held (on appeal): That the claim did arise out of the bankruptcy: that but for the impending bankruptcy the transaction would never have taken place, and but for the actual bankruptcy it would never have been disputed: and that the decision of the County Court Judge was right. *In re Hawke, Ex parte Scott & Smith*, 3 Morrell, 1; L. R. 16 Q. B. D. 503; 55 L. J. Q. B. 302; 54 L. T. 54; 34 W. R. 167—D.

Jurisdiction—Transfer from.]—Where the Judge of a County Court not having jurisdiction in bankruptcy, at the hearing of a judgment summons for a committal, is of opinion that a receiving order should be made in lieu of a committal, and orders the matter to be transferred to the Bankruptcy Court under Rule 268 (1) (a) of the Bankruptcy Rules, 1885 (*compare Rule* 359, *Bankruptcy Rules*, 1886), notice of the subsequent proceedings under the order of transfer must be served on the judgment debtor. The Court of Bankruptcy in such a case is not bound to adopt the opinion of the County Court Judge, and to make a receiving

order as a matter of course, but must exercise its own judicial discretion at the hearing. *In re Andrews, Ex parte Andrews*, 2 Morrell, 244; L. R. 15 Q. B. D. 335; 54 L. J. Q. B. 572—Cave, J.

Discharge of Bankrupt—Consent to Judgment—Practice.]—Where under the provisions of section 28, sub-section (6), of the Bankruptcy Act, 1883, the discharge of a bankrupt is granted by the County Court Judge, subject to the condition that such bankrupt shall consent to judgment being entered against him by the trustee in the bankruptcy for any balance of the debts provable under the bankruptcy, which was not satisfied at the date of the order, judgment shall be entered in the County Court, even though the amount is in excess of 50*l*. As the judgment is entered in the County Court without any preliminary proceedings, the Registrar is not entitled to demand any fees as in respect thereof on entering such judgment. *In re Howe*, 4 Morrell, 57; L. R. 18 Q. B. D. 573; 56 L. J. Q. B. 257; 3 W. R. 380—Cave, J.

Administration of Estate of Deceased Insolvent—Practice.]—The Court of Bankruptcy, in administering the estate of a person dying insolvent under section 125 of the Bankruptcy Act, 1883, will follow the practice of the Chancery Division of the High Court in administration actions; and the County Court in Bankruptcy has in such case no jurisdiction to make an order against a stranger to pay over money, which the Chancery Division of the High Court would not make in an administration action. *In re Crowther, Ex parte Ellis*, 4 Morrell, 304; L. R. 20 Q. B. D. 47; 36 W. R. 139—D.

Order of High Court for Payment of Costs—Power to order Payment by Instalments.]—The plaintiff in an action in the Queen's Bench Division of the High Court of Justice obtained an order against the defendant for the payment of certain costs. Subsequently, on the application of the plaintiff, a judgment summons under the Debtors Act, 1869, was issued out of the Brentford County Court, asking for an order for the payment by instalments of the sum due. The County Court Judge refused to make the order, on the ground that he had no jurisdiction to interfere with the order of a Superior Court for payment of a larger sum.

Held: That the County Court, not being a Court within the London Bankruptcy District, had power to enforce such an order or judgment of the High Court by directing payment thereof by instalments.

But the County Court would have no power to vary or rescind an order made by the Superior Court for the payment by instalments of a judgment debt, as in such a case the Superior Court would have already dealt with the question of the debtor's means.

The case of *Washer* v. *Elliott* (1 C. P. D. 169; 45 L. J. C. P. 144; 34 L. T. 756; 24 W. R. 432) explained. *In re Ives, Ex parte Addington*, 3 Morrell, 83; L. R. 16 Q. B. D. 665; 55 L. J. Q. B. 246; 34 W. R. 593—Cave, J.

Appeal from—Duty of Registrar.]—Where an order is made by a Divisional Court in Bankruptcy on an appeal from a County Court, and the Registrar of the County Court neglects or refuses to carry out such order, the Divisional Court has no original jurisdiction to make an order on the County Court Registrar directing him to do so. But where an order is made by a Divisional Court in Bankruptcy on an appeal from a County Court, the Registrar of the County Court ought to comply with such order forthwith, and has no right to refuse to comply with it until the time limited for appeal to the Court of Appeal has expired. Thus, where the Divisional Court in Bankruptcy on an appeal from a County Court allowed the appeal, and gave leave to the unsuccessful respondent to appeal to the Court of Appeal, but made an order directing moneys in Court to be paid out, which the Registrar of the County Court declined to do until the time limited for appeal to the Court of Appeal had expired, and an order was in consequence made by the Divisional Court, directing him to pay out the moneys in question, together with costs, from which order the Registrar appealed.

Held: That the Registrar had no right to refuse to pay out the said moneys, there having been no stay of proceedings under the order of the Divisional Court pending appeal.

But the Registrar was an officer of the County Court: the order of the Divisional Court upon the appeal from the County Court was to be carried out by the County Court; and the Divisional Court had no jurisdiction to make such an order against the Registrar. *In re Wise, Ex parte Rowland*, 3 Morrell, 174; L. R. 17 Q. B. D. 389; 55 L. J. Q. B. 362; 54 L. T. 722; 34 W. R. 711—C. A.

Receiving Order made in County Court and High Court.] — On February 19th, 1885, a petition was presented against the debtor in the London Bankruptcy Court; but the hearing of such petition was subsequently adjourned from time to time, with the consent of the petitioning creditor. On January 5th, 1886, a receiving order was made on this petition in the High Court at 11.30 o'clock, and on the same day at 1 o'clock, a receiving order was also made against the debtor in the Swansea County Court at the instance of another creditor. On an appeal by the creditor presenting the petition in London to set aside such order of the County Court,

Held: That from the evidence it appeared clear that the legitimate

business of the debtor was carried on in Swansea, which was *primâ facie* the place where his business transactions ought to be investigated; and that the petitioning creditor in London having for his own purposes delayed for several months to proceed with his petition, the proper course for the Court to pursue was not to interfere with the order of the County Court, and application to be made to the London Court to stay the proceedings there. *In re Strick, Ex parte Martin*, 3 Morrell, 78—D.

Application to be made to, to enforce Payment of Money by Trustee.]—An order having been made by a County Court Judge against a trustee in liquidation to credit the estate of the debtor with certain moneys, the trustee appealed to the Bankruptcy Judge, by whom the decision was substantially affirmed, and a special order was made as to costs, and as to the payments to be made by the trustee. The trustee having failed to comply with the order, an application was made to the Bankruptcy Judge to enforce the order.

Held: That the application should have been made to the County Court Judge. *In re Thomas, Ex parte Comptroller*, 4 Morrell, 49—Cave, J.

Practice in—Vivâ Voce Evidence.]—The practice by which application to be allowed to give *vivâ voce* evidence must be made beforehand, and not at the same time with the motion, upon the hearing of which it is desired to use such evidence, applies only to the High Court; and such practice is not intended to apply to the County Courts, or to affect the course of business therein. *In re Wilson, Ex parte Watkinson*, 4 Morrell, 238; 57 L. T. 201; 35 W. R. 668—D.

REDIT.

Undischarged Bankrupt—Obtaining Credit.]—In order to convict an undischarged bankrupt under 46 & 47 Vict. c. 52, section 31, of the offence of "obtaining credit to the amount of twenty pounds or upwards from any person, without informing such person that he is an undischarged bankrupt," it is not necessary that there should be a stipulation to grant credit in the contract between the parties; it is sufficient if a credit in fact is obtained. The prisoner, an undischarged bankrupt, living in Newcastle-on-Tyne, bought a horse from the prosecutor, a farmer in Ireland, for 22*l.*, free of expenses to the vendor, who by the prisoner's direction delivered the horse on board a steamer at Larne; no stipulation was made as to the time or mode of payment, and the prisoner did not disclose the fact that he was an undischarged bankrupt. The prisoner paid for the carriage of the horse on its delivery to him at

Newcastle, and immediately sold it, and refused to pay the price to the prosecutor.

Held: That there was evidence to go to the jury of an obtaining of credit by the prisoner within the meaning of section 31 of the Bankruptcy Act, 1883.

That the offence was committed in Newcastle-on-Tyne: *Reg.* v. *Peters*, L. R. 16 Q. B. D. 636; 55 L. J. M. C. 173; 54 L. T. 545; 34 W. R. 399; 50 J. P. 631; 16 Cox, C. C. 36—C. C. R.

Order for Goods less than 20*l.*—*Delivery of Goods over* 20*l.*]—The offence of obtaining credit to the extent of 20*l.* or upwards by an undischarged bankrupt is committed where the bankrupt receives and keeps goods of the value of 20*l.* or upwards without paying for them or informing the creditor of the fact that he is an undischarged bankrupt, or repudiating the contract, although the goods were sent in execution of an order for goods of a less value than 20*l.* *Reg.* v. *Juby*, 55 L. T. 788; 35 W. R. 168; 51 J. P. 310; 16 Cox, C. C. 160—C. C. R.

CREDITOR.

Meaning of Term.]—The words "a creditor" in section 4, sub-section 1 (g), of the Bankruptcy Act, 1883, mean a creditor under or by means of a final judgment. *In re Faithfull, Ex parte Moore*, 2 Morrell, 52; L. R. 14 Q. B. D. 627; 54 L. J. Q. B. 190; 52 L. T. 376; 33 W. R. 438—C. A.

——An unpaid creditor is a "person aggrieved" within the meaning of section 104, sub-section (2), of the Bankruptcy Act, 1883, by the granting of an order of discharge to a bankrupt, and as such has a right of appeal against such order. *In re Payne, Ex parte Castle Mail Packet Co.*, 3 Morrell, 270; L. R. 18 Q. B. D. 151; 35 W. R. 82—C. A.

Secured.]—The estimate of the value of his security required of a secured creditor by section 6, sub-section (2), of the Bankruptcy Act, 1883, does not necessarily mean that such estimate shall be the exact value, and the fact that a secured creditor has undervalued his security is not a ground for dismissing a bankruptcy petition presented by him. A secured creditor so presenting a petition would be bound to give up the security to the trustee in the bankruptcy if he wishes to take it at the value placed by such secured creditor upon it in the petition. *In re Lacy, Ex parte Taylor*, 1 Morrell, 113; L. R. 13 Q. B. D. 128—D.

——Where a valuation was put upon a security by a creditor which, owing to the death of the bankrupt, greatly increased in value, such

creditor was entitled to amend his valuation under Rule 13 of Schedule II. of the Bankruptcy Act, 1883, notwithstanding that the trustee in the bankruptcy had stated to the creditor that he intended to purchase the security at his valuation, but the purchase-money had not been paid. The words of the said Rule 13, which provides that a secured creditor may amend the valuation of his security made in his proof of debt "at any time," are to be limited to the extent that the right cannot be exercised after the trustee in the bankruptcy has actually paid for the security at the valuation set upon it by the creditor. A further limitation may also arise if, under Rule 12 (c) of Schedule II., the creditor, by notice in writing, puts the trustee to his election whether he will redeem the security or not, and the trustee has declared his election to purchase the security at the creditor's valuation. *In re Sadler, Ex parte Norris*, 3 Morrell, 260; L. R. 17 Q. B. D. 728; 56 L. J. Q. B. 93; 35 W. R. 19—C. A.

——Where a mortgagee who has valued his security is desirous of amending his valuation and proof under Rule 13 of Schedule II. of the Bankruptcy Act, 1883, leave to amend may be given in a proper case, although such amendment is opposed by a subsequent mortgagee. *In re Arden, Ex parte Arden*, 2 Morrell, 1; L. R. 14 Q. B. D. 121; 51 L. T. 712; 33 W. R. 460—D.

"*Judgment.*"]—Where an order is made in the Divorce Court directing the co-respondent to pay to the husband, the petitioner in the suit, the amount given as damages forthwith for the purpose of settlement on the children of the marriage, such husband is not a "judgment creditor" of the co-respondent within the meaning of section 103, sub-section (5), of the Bankruptcy Act. *In re Fryer, Ex parte Fryer*, 3 Morrell, 231; L. R. 17 Q. B. D. 718; 55 L. J. Q. B. 478; 55 L. T. 276; 34 W. R. 766—C. A.

Entitled to Petition.]—Where by failing to comply with the terms of a bankruptcy notice a debtor has committed an act of bankruptcy under section 4, sub-section 1 (g), of the Bankruptcy Act, 1883, any creditor may avail himself of such act of bankruptcy for the purpose of presenting a petition, and the right to present a petition is not limited to that creditor by whom the bankruptcy notice has been served. *In re Hastings, Ex parte Dearle*, 1 Morrell, 281; L. R. 14 Q. B. D. 184; 54 L. J. Q. B. 74; 33 W. R. 440—C. A.

CUSTOM.]—See *Reputed Ownership.*

DEATH.

Of Debtor.]—Where a debtor died two days after presenting his petition in the County Court, and at the subsequent first meeting of the creditors resolutions were passed that the proceedings be continued and the estate administered by a trustee as if such debtor were alive and had been adjudicated bankrupt, but the County Court Judge declined to confirm such resolutions, and stated a case for the opinion of the High Court,

Held: That the intention of the Legislature in framing section 108 of the Bankruptcy Act, 1883, which provides for the continuance of proceedings on the death of a debtor by or against whom a bankruptcy petition has been presented, was to meet a case of this nature: and that the proper course for the Court to pursue, in the absence of any arrangement on the part of the representatives of the deceased debtor, was to make an order of adjudication against him and allow the matter to proceed in the ordinary way. *In re Walker, Ex parte Sharpe,* 3 Morrell, 69; 54 L. T. 682; 34 W. R. 550—D.

——Where a debtor dies after a bankruptcy petition has been presented against him by a creditor, but before the petition has been served, all further proceedings on such petition must be stayed. *In re Easy, Ex parte Hill & Hymans,* 4 Morrell, 281; L. R. 19 Q. B. D. 538; 35 W. R. 819—C. A.

DEBTORS ACT, 1869.

Appeal under.]—By reason of the provisions of sections 103 and 104 of the Bankruptcy Act, 1883, an appeal from an order of the judge to whom bankruptcy business is assigned upon an application under section 5 of the Debtors Act, 1869, will now lie directly to the Court of Appeal, and not as formerly to a Divisional Court. *In re Lascelles, Ex parte Genese,* 1 Morrell, 183; 53 L. J. Q. B. 578; 32 W. R. 794—D.

"*Means.*"]—For the purpose of determining whether a judgment debtor has had the "means to pay" the judgment debt, with the view of making an order for his committal under section 5 of the Debtors Act, 1869, money derived from a gift may be taken into account. It is not necessary that the "means to pay" should have been derived from the debtor's earnings or from a fixed income. *In re Park, Ex parte Koster,* 2 Morrell, 35; L. R. 14 Q. B. D. 597; 54 L. J. Q. B. 389; 52 L. T. 946; 33 W. R. 606—C. A.

Effect of, on Discharge.]—Under section 28, sub-section (2), of the Bankruptcy Act, 1883, the Court is bound to refuse an order of discharge to a bankrupt who has been convicted of a misdemeanour under Part II.

of the Debtors Act, 1869, even though such bankrupt has undergone a sentence of imprisonment imposed upon him for the said offence. *In re Richardson & Webster*, 4 Morrell, 22—Hazlitt, R.

Married Woman.]—A married woman cannot be committed to prison under section 5 of the Debtors Act, 1869, for non-payment of a judgment recovered against her in an action brought under section 1, sub-section (2), of the Married Women's Property Act, 1882. *In re Morley, Scott* v. *Morley*, 4 Morrell, 286; L. R. 20 Q. B. D. 120; 36 W. R. 67—C. A.

Judgment Creditor—Means.]—The Court has jurisdiction to make a receiving order, in lieu of a committal, against a judgment debtor, under section 103, sub-section (5), of the Bankruptcy Act, 1883, only on the application of a person who is strictly speaking a "judgment creditor." Such receiving order cannot be made, therefore, on the application of every person who is entitled to apply to the Court under section 5 of the Debtors Act, 1869. Where a judgment debtor makes default in payment of the judgment debt, the Court has power of committal under section 5 of the Debtors Act, 1869, if proof is given that such debtor has had the means of paying part of the said debt even though he has not had the means of paying the whole amount. *In re Fryer, Ex parte Fryer*, 3 Morrell, 231; L. R. 17 Q. B. D. 718; 55 L. J. Q. B. 478; 55 L. T. 276; 34 W. R. 766—C. A.

Unreasonable rejection of Proof—Omission to file Judgment by Consent.]—A trustee ought not to reject a proof tendered in respect of a debt, for which a judgment by consent has been obtained, merely on the ground that a copy not having been filed as required by section 27 of the Debtors Act, 1869, the judgment or any execution issued or taken out thereon is void; but in such case the trustee ought to investigate the validity of the alleged debt. *In re Smith, Ex parte Brown*, 3 Morrell, 202; L. R. 17 Q. B. D. 488—C. A.

See also cases collected under titles: *Arrest; Committal.*

DELAY.

Of Petitioning Creditor.]—On February 19th, 1885, a petition was presented against the debtor in the London Bankruptcy Court, but the hearing of such petition was subsequently adjourned from time to time with the consent of the petitioning creditor. On January 5th, 1886, a receiving order was made on this petition in the High Court at 11·30 o'clock, and on the same day at 1 o'clock, a receiving order was also made against the debtor in the Swansea County Court at the instance of another

creditor. On an appeal by the creditor presenting the petition in London to set aside such order of the County Court.

Held: That from the evidence it appeared clear that the legitimate business of the debtor was carried on in Swansea, which was *primâ facie* the place where his business transactions ought to be investigated; and that the petitioning creditor in London having for his own purposes delayed for several months to proceed with his petition, the proper course for the Court to pursue was not to interfere with the order of the County Court, and application to be made to the London Court to stay the proceedings there. *In re Strick, Ex parte Martin*, 3 Morrell, 78—D.

——After a bankruptcy petition had been presented but before the day appointed for the hearing, the debtor obtained the consent of the petitioning creditors to an adjournment of such hearing with a view to a settlement, and a form of consent to an extension of time was sent to the County Court Registrar by post, but on the day appointed for the hearing the Registrar dismissed the petition for non-appearance. Notice of appeal having been given by the petitioning creditors, the debtor filed his own petition, on which a receiving order was made. When the appeal came on for hearing, an adjournment was taken by consent in order that a scheme of arrangement proposed by the debtor might be considered; but this subsequently fell through, and the petitioning creditors now proceeded with their appeal, a year after notice thereof had been given.

Held: That the delay which had occurred was fatal to the appeal; and that no sufficient reason having been adduced to justify the Court in hearing it notwithstanding such delay, the appeal must be dismissed. *In re Gamlen, Ex parte Ward & Co.*, 4 Morrell, 301—D.

Of Creditor.]—Although the time allowed for appeal in bankruptcy matters may be extended by the Court, yet some ground must always be shown why this should be done, and notwithstanding the fact that when a *bonâ fide* mistake has been committed in the estimation of a proof the trustee in the bankruptcy ought not to be permitted to take a technical advantage of such mistake, where a creditor for more than a year and a half took no steps to reverse the decision of the County Court Judge refusing to allow such creditor to amend or withdraw his proof alleged to be so wrongly estimated, the Court could not permit him to reopen the case for the purpose of setting aside that decision. *In re Tricks, Ex parte Charles*, 3 Morrell, 15—Cave, J.

Of Debtor in applying for discharge.]—The fact that a bankrupt who, by his conduct, has brought himself within the quasi-penal provisions of

section 28 of the Bankruptcy Act, 1883, abstains from applying for his discharge for a considerable time after he is entitled to do so, affords no ground for mitigation of the punishment proper to be imposed by the Court under that section by reason of such conduct. *In re Good*, 3 Morrell, 43—Brougham, R.

DEPARTING FROM DWELLING-HOUSE.

—See *Act of Bankruptcy*.

DEPOSIT.

Application to dispense with, on appeal.]—Where application was made by a debtor who had presented a bankruptcy petition against himself to dispense with the deposit of 20*l.* required to be lodged upon an appeal against a decision of the Registrar rescinding the receiving order at the request of the official receiver under section 14 of the Bankruptcy Act, 1883.

Held: That the debtor's alleged inability to raise the necessary sum did not on the facts of the case constitute such a special circumstance under Rule 113 of the Bankruptcy Rules, 1883, as to justify the Court in granting the application. *In re Robertson*, 2 Morrell, 117—C. A.

——Where application was made by a bankrupt under Rule 131 of the Bankruptcy Rules, 1886, for leave to dispense with the deposit of 20*l.* required to be lodged upon an appeal by him from an order of the Registrar refusing to annul the adjudication.

Held: That the inability of the bankrupt himself to find the means for making the deposit, or to obtain the necessary sum from his friends, did not constitute such grounds as would justify the Court in granting the application. *In re Grepe, Ex parte Grepe*, 4 Morrell, 128—C. A.

——In the case of an appeal to the Court of Appeal by the Board of Trade, Rule 131 of the Bankruptcy Rules, 1886, does not apply, and the Board of Trade being a Government Department is entitled to have the appeal entered without lodging any deposit. *In re Mutton, Ex parte the Board of Trade*, 4 Morrell, 115—D.

DISCHARGE.

The quasi-penal provisions of section 28 of the Bankruptcy Act, 1883, with regard to the granting of a bankrupt's discharge, apply to the conduct of the bankrupt previous to the time when the Act came into operation. *In re Salaman, Ex parte Salaman*, 2 Morrell, 61 L. R. 14 Q. B. D. 936; 54 L. J. Q. B. 238; 52 L. T. 378—C. A.

Absolute Refusal of—Discretion.]—In considering the question of a bankrupt's discharge the Court is bound to have regard not to the interests of such bankrupt or of the creditors alone, but also to the interests of the public and of commercial morality: and although facts may not be absolutely proved which would under section 28, subsection (2), of the Bankruptcy Act, 1883, compel the Court to refuse any discharge, yet where gross misconduct within the said section is shown on the part of the bankrupt, the Court is perfectly justified in declining to grant a discharge upon conditions and in making an order absolutely refusing to such bankrupt any discharge at all. *In re Badcock, Ex parte Badcock,* 3 Morrell, 138—D.

Suspension—Appeal from discretion.]—Where all the facts have been brought to the notice of the Registrar, and he has exercised his discretion as to the terms on which a bankrupt should obtain his discharge, the Court of Appeal will not interfere with such decision on an allegation that the punishment imposed was too lenient and unless it is perfectly clear that the decision was wrong. *In re Chase, Ex parte Cooper,* 3 Morrell, 228—C. A.

——Where the Registrar is not required by the provisions of the Bankruptcy Act absolutely to refuse a bankrupt his discharge, he has a discretion under section 28 as to the amount of punishment to be inflicted, and it will require a very strong case to induce the Court of Appeal to interfere with the exercise of that discretion if the Registrar comes to a right conclusion on the facts. But if the Court of Appeal is of opinion that the conclusion come to by the Registrar as to the facts is erroneous, the Court of Appeal will vary his decision. *In re Payne, Ex parte Castle Mail Packet Company,* 3 Morrell, 270; L. R. 18 Q. B. D. 154; 56 L. J. Q. B. 625; 35 W. R. 89—C. A.

"*Proper Books.*"]—In deciding as to the granting or refusing the discharge of a bankrupt or the approval of a composition or scheme of arrangement, the question whether the debtor has kept proper books is one of primary importance. *In re Wallace, Ex parte Campbell,* 2 Morrell, 167; L. R. 15 Q. B. D. 213; 54 L. J. Q. B. 382; 53 L. T. 208—C. A.

——Such books as are usual and proper in the business carried on are to be kept; and if there are no books usually kept in a particular trade, or if a bankrupt is not a trader, he does not fall within the section by omitting to keep books. *In re Mutton, Ex parte the Board of Trade,* 4 Morrell, 180; L. R. 19 Q. B. D. 102; 56 L. J. Q. B. 395; 56 L. T. 803; 35 W. R. 561—C. A.

Misdemeanour—Absolute Refusal.]—Under section 28, sub-section (2) of the Bankruptcy Act, 1883, the Court is bound to refuse an order of discharge to a bankrupt who has been convicted of a misdemeanour under Part II. of the Debtors Act, 1869, even though such bankrupt has undergone a sentence of imprisonment imposed upon him for the said offence. *In re Richardson & Webster*, 4 Morrell, 22—Hazlitt, R.

"Conduct" of Bankrupt.]—On application by a bankrupt for his discharge under section 28 of the Bankruptcy Act, 1883, the Court has no jurisdiction to take into consideration as "conduct" a refusal on the part of such bankrupt to submit to a medical examination with a view to life insurance for the purpose of enabling the trustee in the bankruptcy to realise to better advantage a contingent reversionary interest of the said bankrupt in certain property. The word "conduct" in section 28 does not include general misconduct, but if not covered by any of the specific instances mentioned in that section, it must be regarded with reference to section 24 of the Act, which defines the duties of the debtor as to the realisation and distribution of his property.

A report as to the bankrupt's conduct and affairs signed by the assistant official receiver will be accepted as the "Report of the Official Receiver," which the Court is required to take into consideration on an application for discharge. *In re Betts and Block, Ex parte the Board of Trade*, 4 Morrell, 170; L. R. 19 Q. B. D. 39; 56 L. J. Q. B. 370; 56 L. T. 804; 35 W. R. 530—C. A. And see also *In re Bull*, 2 Morrell, 59—Murray, R.

——Upon application by a bankrupt for his discharge under section 28 of the Bankruptcy Act, 1883, where any of the offences specified in sub-section (3) of that section are proved to have been committed, the Court must either refuse the order, or suspend its operation, or grant an order subject to conditions, and the Court cannot in such case grant an unconditional discharge. *In re Heap, Ex parte the Board of Trade*, 4 Morrell, 314—D.

——The fact that a bankrupt who, by his conduct, has brought himself within the quasi-penal provisions of section 28 of the Bankruptcy Act, 1883, abstains from applying for his discharge for a considerable time after he is entitled to do so, affords no ground for mitigation of the punishment proper to be imposed by the Court under that section by reason of such conduct. *In re Good*, 3 Morrell, 43—Brougham, R.

Report of Official Receiver—Absolute Refusal—Mistake.]—Although a Court of Appeal in Bankruptcy will not readily interfere with the exercise of the discretion of a County Court Judge refusing the discharge of a

bankrupt, yet if the decision of such judge is founded solely on the report of the official receiver and on appeal the statements contained in such report are proved to be unfounded and are capable of explanation, the Court of Appeal will vary the order of the County Court and will grant to the bankrupt his order of discharge, subject to such conditions as in the nature of the case it may think fit. Where in the report of the official receiver it was alleged that the bankrupt had committed six of the offences specified in section 28, sub-section (3) of the Bankruptcy Act, 1883, and the discharge was in consequence absolutely refused, but on appeal satisfactory explanations were afforded of all the said charges with the exception of the fact that twenty-three years ago the bankrupt had made a statutory arrangement with his creditors.

Held: That the discharge of the bankrupt should be granted, subject to a suspension of one day to meet the requirements of the Act in respect of the only offence proved against him. *In re Sultzberger, Ex parte Sultzberger,* 4 Morrell, 82—D.

Report of Official Receiver—Extravagant Living—Speculations—Continuing to Trade.]—The official receiver reported on an application by a bankrupt for his discharge that such bankrupt had been guilty of unjustifiable extravagance in living, of rash and hazardous speculations, and of continuing to trade after knowing himself to be insolvent, which report was borne out by the facts. An unconditional discharge was nevertheless granted to the bankrupt by the County Court Judge.

Held: That the Bankruptcy Act, 1883, was intended to make mercantile men restrain from offences against the law of fair dealing; and where a bankrupt is clearly proved to have committed offences under section 28, sub-section (3) of the Act the Court ought not to pass over such offences.

That where the County Court Judge finds that a bankrupt has been guilty of misconduct under section 28 and imposes a penalty, the Court of Appeal will not be inclined, except upon very grave grounds, to interfere with the amount of punishment awarded, but if the Judge comes to a wrong decision, contrary to the facts, that no misconduct has been committed, the Court on an appeal is bound to express its opinion and act upon it.

That although a man has a perfect right, as long as he is solvent, to determine that he will go on with a business even though it may be a losing one, in the hope of a revival in trade, yet the moment he becomes insolvent he is no longer going on at his own risk but at the risk of his creditors; and the proper course for a man to pursue, as soon as he finds that he cannot pay twenty shillings in the pound, but he nevertheless

thinks that if he goes on he may be able to retrieve his position, is to call his creditors together and leave them to determine whether the business shall be continued or not.

That a man has no right, when his business can no longer support it, to go on living in the style usual during the time such business was a profitable one merely for the sake of keeping up appearances, which under such circumstances is only another term for living on his creditors.

A man is bound not to keep up appearances, but to pay his debts, and if his profits will not allow of his living at the particular rate he has been accustomed to live at, then his plain duty is at once to reduce such expenditure. *In re Stainton, Ex parte the Board of Trade,* 4 Morrell, 242—D.

Action by Debtor—Contracting Debts.]—The fact that a bankrupt has brought an unsuccessful action, the costs of which he is unable to pay, is not sufficient cause to justify the Court in refusing his discharge on the ground that under sub-section 3 (c) of section 28 of the Bankruptcy Act, 1883, such bankrupt has contracted a debt without having any reasonable ground of expectation of being able to pay it. *In re J. Williams,* 1 Morrell, 91—Brougham, R. And see also *In re Du Boulay,* 2 Morrell, 49—Brougham, R.

Contracting Debts—Condition—Consent to Judgment.]—The debtors commenced business by means of borrowed money, and assigned as security to the lender their leasehold premises, goodwill, and all existing and after-acquired stock-in-trade. The mortgagee subsequently took possession under this deed, and the debtors became bankrupt, nothing being left for the general creditors.

Held: That the debtors had contracted debts without having any reasonable or probable ground of expectation of being able to pay them; and that the order of the Registrar granting a discharge only upon the terms of judgment being entered up against the bankrupts for the full amount of the debts provable in the bankruptcy, was a right order. *In re White, Winter & Co., Ex parte White, Winter & Co.,* 2 Morrell, 42; L. R. 14 Q. B. D. 600; 54 L. J. Q. B. 384; 33 W. R. 670—C. A.

Condition—Consent to Judgment.]—A debtor at the time when the action was commenced in which final judgment was obtained against him, upon which the receiving order was subsequently made, carried on business in partnership with his father, and had a considerable income. During the pendency of the proceedings in the action, the debtor paid away the money belonging to him in the business, and also received notice from his father to quit the partnership. The County Court Judge

granted the bankrupt his discharge on the terms that he should pay to the trustee in the bankruptcy the sum of 700*l.* out of his earnings or income or any after-acquired property.

Held (on appeal): That the order of the County Court Judge must be modified, and that there would be an order granting to the bankrupt his discharge on consenting to judgment being entered against him in the terms of section 28, sub-section (6), of the Bankruptcy Act, 1883. *In re Clarkson, Ex parte Allestree,* 2 Morrell, 219—D.

Condition—Consent to Judgment.]—An order was made by the County Court Judge directing that the discharge of the bankrupts should be allowed as soon as a sufficient sum was paid to the trustee in the bankruptcy to make up a dividend of 5*s.* in the pound. On appeal the objection was taken that the order in question was wrong in form.

Held: That the proper order to be made under the circumstances was that the discharge of the bankrupts should be granted subject to judgment being entered against them under section 28, sub-section (6), of the Bankruptcy Act, 1883, for such amount and under such conditions as set out in the order. *In re Small & Small, Ex parte Small & Small,* 3 Morrell, 296—D.

Consent to Judgment—Practice in County Court.]—Where under the provisions of section 28, sub-section (6), of the Bankruptcy Act, 1883, the discharge of a bankrupt is granted by the County Court Judge subject to the condition that such bankrupt shall consent to judgment being entered against him by the trustee in the bankruptcy for any balance of the debts provable under the bankruptcy which was not satisfied at the date of the order, judgment shall be entered in the County Court even though the amount is in excess of 50*l.* As the judgment is entered in the County Court without any preliminary proceedings, the Registrar is not entitled to demand any fees as in respect thereof on entering such judgment. *In re Howe,* 4 Morrell, 57; L. R. 18 Q. B. D. 573; 56 L. J. Q. B. 257; 35 W. R. 380—Cave, J.

Rash and hazardous speculations—Conditional discharge.]—Where the bankrupt who was a solicitor without capital entered into heavy building operations on borrowed money, to which speculations his insolvency was attributable.

Held: That the bankrupt had been guilty of rash and hazardous speculations, and that the order of the Registrar refusing an absolute discharge was a right order. *In re Salaman, Ex parte Salaman,* 2 Morrell, 61; L. R. 14 Q. B. D. 936; 54 L. J. Q. B. 238; 52 L. T. 378—C. A.

Rash and hazardous speculations—Proper books.]—The bankrupt, who carried on business as a hatter, made certain purchases of land and houses adjoining property belonging to himself for the purpose of resale. The books in the hatter's business were properly kept and balanced, but no proper books were kept with respect to the land purchases through which the bankruptcy subsequently occurred. On application for discharge the official receiver submitted that the bankrupt had brought himself within the provisions of section 28, sub-section 3 (*a*) of the Bankruptcy Act, 1883, in that he had "omitted to keep such books of account as are usual and proper in the business carried on by him, and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy."

Held: That the bankrupt in making the purchases of land under the circumstances was not carrying on a business, and did not fall within the provisions of section 28, sub-section 3 (*a*), by omitting to keep books of account.

That such books as are usual and proper in the business carried on are to be kept; and if there are no books usually kept in a particular trade, or if a bankrupt is not a trader, he does not fall within the section by omitting to keep books. *In re Mutton, Ex parte the Board of Trade,* 4 Morrell, 180; L. R. 19 Q. B. D. 102; 56 L. J. Q. B. 395; 56 L. T. 802; 35 W. R. 561—C. A.

Effect of previous petition under which no discharge.]—On the application of the bankrupt for his discharge the official receiver reported that the bankrupt had previously filed a petition for liquidation of his affairs, under which his discharge had not been granted.

Held: That the practice of the Court is, that when an undischarged bankrupt makes an application for his discharge under a second bankruptcy, the Court will not entertain the application until he has purged himself of his former bankruptcy; and it appearing that the bankrupt had not obtained his discharge under the liquidation petition referred to in the report of the official receiver, the application would be adjourned *sine die* with liberty to apply. *In re Binko,* 2 Morrell, 45—Murray, R.

Suspension—Mistake as to Facts.]—After an order had been made suspending the discharge of a bankrupt for five years, certain facts were brought to the notice of the County Court Judge, from which he came to the conclusion that the opinion he had formed of the bankrupt's conduct at the time of the application for discharge was a mistaken one. On appeal by the bankrupt from the order made on application for his discharge,

Held: That the proper course was for such appeal to stand over in

order that an application might, under the circumstances, be made to the County Court Judge to review his decision. *In re Dowson, Ex parte Dowson*, 4 Morrell, 310—D.

Appeal from Order of—Notice.]—Notice of appeal from an order made by the Court on application by a bankrupt for his discharge should be a fourteen days' notice. Where such notice was not given and objection was taken at the hearing, the Court directed the case to stand over for a week until the required time had elapsed. *In re Landau, Ex parte Brown & Wingrove*, 4 Morrell, 253—C. A.

Appeal by Board of Trade.]—Rule 237 of the Bankruptcy Rules, 1886, is not *ultra vires*, but is a rule for carrying into effect the objects of the Bankruptcy Act, 1883; and the Board of Trade are entitled under that rule to appeal from any order of the Court made upon an application by a bankrupt for his discharge. *In re Stainton, Ex parte the Board of Trade*, 4 Morrell, 242; L. R. 19 Q. B. D. 182; 57 L. T. 202; 35 W. R. 667—D.

Appeal in Small Bankruptcies.]—Rule 273 (6) of the Bankruptcy Rules, 1887,—which provides that in a small bankruptcy no appeal shall lie from any order of the Court except by leave of the Court—does not apply in the case of an order made upon application by a bankrupt for his discharge. *In re Rankin, Ex parte Rankin*, 4 Morrell, 311—D.

Discharge under Scheme of Arrangement.]—In a case where a scheme of arrangement of the debtor's affairs, duly agreed to and confirmed by the creditors in accordance with the provision of section 18 of the Bankruptcy Act, 1883, contained a clause to the effect that "the debtors shall be discharged when the committee of inspection so resolve."

Held: That such provision dealing with the discharge of the debtors was unreasonable, and not in accordance with the intention and scope of the Act; and that a scheme containing such a provision ought not to be approved by the Court, even though the debtors themselves asked that such approval should be given. *In re Clarke, Ex parte Clarke*, 1 Morrell, 143; L. R. 13 Q. B. D. 426; 53 L. J. Ch. 1062; 51 L. T. 584; 32 W. R. 775—C. A.

DISCLAIMER.

Leave—On what terms granted.]—In cases where a trustee in a bankruptcy seeks to disclaim, if subsequent to the adjudication any advantage has been derived from the use of the landlord's property, that is the use of the creditors and not of the debtor and for this advantage the land-

lord is entitled to be paid. *In re T. Brooke, Ex parte the Trustee*, 1 Morrell, 82—Cave, J.

——Where application for leave to disclaim is made by a trustee in a bankruptcy, a demand of the landlord for rent in respect of the premises sought to be disclaimed will not be entertained by the Court unless such landlord has been kept out of his property for the benefit of the creditors, and the creditors have obtained some advantage therefrom. *In re Zappert & Co., Ex parte the Trustee*, 1 Morrell, 72—Cave, J.

——Where notice had been served on the trustee requiring him to decide whether he would disclaim or not within twenty-eight days in accordance with the terms of section 55, sub-section 4, and the trustee did not within that time signify his intention as required, leave to disclaim given only on condition of payment of a month's rent to the landlord, such rent, together with the costs of the landlord, to be paid by the trustee personally. *In re Page, Ex parte the Trustee*, 1 Morrell, 287; L. R. 14 Q. B. D. 401; 33 W. R. 825—Cave, J.

——Where a trustee seeks to disclaim a lease under section 55 of the Bankruptcy Act, 1883, the Court may, if it thinks fit, under sub-section 3 of section 55 permit such trustee to remove fixtures. *In re Moser, Ex parte the Trustee*, 1 Morrell, 244; L. R. 13 Q. B. D. 738; 33 W. R. 16—Wills, J.

Claim of Landlord—Small Bankruptcy.]—Where in accordance with the provisions of section 121 of the Bankruptcy Act, 1883, relating to small bankruptcies, an order is made for the summary administration of a bankrupt's estate, and the official receiver, as trustee in the bankruptcy, disclaims leasehold property of the bankrupt without the leave of the Court under the powers conferred on him by Rule 232 of the Bankruptcy Rules, 1883, the Court has no jurisdiction to give any compensation to the landlord out of the estate for the use and occupation of such leasehold property by the official receiver as such trustee. *In re Sandwell, Ex parte Zerfass*, 2 Morrell, 95; L. R. 14 Q. B. D. 960; 54 L. J. Q. B. 325; 52 L. T. 692; 33 W. R. 522—Cave, J.

"*Property*" *Disclaimable.*]—The word "property" as used in section 55, and as defined in section 168 of the Bankruptcy Act, 1883, is not restricted to "property divisible amongst the creditors" mentioned in section 44, but extends to any kind of property subject to any onerous covenants or obligations which may be vested in the debtor. *In re Maughan, Ex parte Monkhouse*, 2 Morrell, 25; L. R. 14 Q. B. D. 956; 54 L. J. Q. B. 128; 33 W. R. 308—Field, J.

Application for Leave—Extension of Time.]—Although the three months given to a trustee by section 55, sub-section (1), of the Bankruptcy Act, 1883, within which to disclaim onerous property may have expired, the Court has power under section 105, sub-section (4), to grant the trustee an extension of time. When a trustee applies for an extension of time, he should give some good reason for the indulgence he asks, and if the rights of the other parties will be prejudiced by the time being extended, the Court will, as a general rule, put the trustee upon terms. *In re Price, Ex parte Foreman*, 1 Morrell, 153; L. R. 13 Q. B. D. 466; 33 W. R. 139—Cave, J.

——Notice of motion for leave to disclaim a lease by the trustee in bankruptcy may be served on persons interested out of the jurisdiction of the Court in the ordinary way. *In re Rathbone, Ex parte Paterson*, 4 Morrell, 270; 56 L. J. Q. B. 504; 57 L. T. 420; 35 W. R. 735—Cave, J.

Refusal of Leave—Misconduct of Trustee.]—On August 4th, 1886, the agent on behalf of a banking company took possession of a quarry under a sublease previously granted by the debtor, the original lessee, as security for a loan. On August 11th, 1886, the debtor was adjudged bankrupt, and such agent was appointed trustee in the bankruptcy, but he nevertheless continued in possession of the said quarry on the part of the bank, which was worked for the bank's benefit. On November 6th, 1886, the agent, as trustee in the bankruptcy, applied to the County Court for unconditional leave to disclaim the lease. This application was opposed by the landlord, and refused by the County Court Judge, but without prejudice to the trustee to apply for leave to disclaim on terms.

Held: That the County Court Judge was right in refusing unconditional leave to disclaim; that the trustee had taken upon himself two utterly irreconcilable duties; and that, having regard to his conduct, and to the fact that no evidence was before the County Court Judge to enable him to come to a proper conclusion as to terms, the order made by him was right. *In re Crowther, Ex parte Duff*, 4 Morrell, 100—D.

See also *Vesting Order*.

DISCOVERY.

The Court ordered that the defendant in an action brought by a trustee in bankruptcy of a firm which had been adjudicated bankrupt before the passing of the Bankruptcy Act, 1883, should be allowed to obtain particulars from and deliver interrogatories to the trustee, and that the action should be tried by a jury. *In re Carrill & McKean*, 1 Morrell, 150—Cave, J.

——Where application was made under section 19 of the Bankruptcy Act, 1869 (*see section* 24 *of the Bankruptcy Act,* 1883), for an order upon a debtor to answer certain enquiries, and to submit to a medical examination for the purpose of life insurance.

Held: That the provisions of the section apply to an examination of the debtor in respect of property; and that the Court could not under the section make an order for the personal examination of the debtor as to the state of health, with a view to insurance. *In re Garnett, Ex parte the Official Receiver,* 2 Morrell, 286; L. R. 16 Q. B. D. 698; 55 L. J. Q. B. 77; 53 L. T. 769; 34 W. R. 79—Cave, J.

——On application by a bankrupt for his discharge, under section 28 of the Bankruptcy Act, 1883, the Court has no jurisdiction to take into consideration as "conduct" a refusal on the part of such bankrupt to submit to a medical examination, with a view to life insurance, for the purpose of enabling the trustee in the bankruptcy to realise to better advantage a contingent reversionary interest of the said bankrupt in certain property. The word "conduct" in section 28 does not include general misconduct, but if not covered by any of the specific instances mentioned in that section, it must be regarded with reference to section 24 of the Act, which defines the duties of the debtor as to the realisation and distribution of his property. *In re Betts & Block, Ex parte the Board of Trade,* 4 Morrell, 170; L. R. 19 Q. B. D. 39; 56 L. J. Q. B. 370; 56 L. T. 804; 35 W. R. 530—C. A.

——The powers given by section 27 of the Bankruptcy Act, 1883, in respect of discovery of a debtor's property, cannot be incorporated into a scheme of arrangement accepted by a majority of the creditors under section 18 of the Act. A scheme of arrangement must be both reasonable, and calculated to benefit the general body of creditors; and where a proposed scheme gave to the creditors no advantage which they would not have if bankruptcy proceedings were allowed to go on, but by reason of the inability to apply the provisions of section 27 as to discovery, such scheme gave to the creditors even less advantage than a bankruptcy.

Held: That the scheme in question was not reasonable, and was not calculated to benefit the general body of creditors; and that the approval of the Court ought not to be granted. *In re Aylmer, Ex parte Bischoffsheim,* 4 Morrell, 152; L. R. 19 Q. B. D. 33; 56 L. J. Q. B. 460; 56 L. T. 801; 35 W. R. 532—C. A.

Of Document.]—The Court will not allow its process to be used to do indirectly that which the process of the Court will not allow to be done

directly. Thus where application was made by a friendly creditor for discovery of documents, nominally for the purpose of carrying out proceedings to expunge a proof, but in reality for the purpose of reopening, after time for appeal had elapsed, the question as to whether the receiving order had been properly made against the bankrupt or not.

Held: That the application was an attempt by the contrivance of the creditor and the bankrupt, in the interest of the bankrupt, to use the process of the Court to do that which, if the bankrupt himself asked the Court, the Court would not allow to be done; and that the Registrar was quite right in refusing it. *In re Dashwood, Ex parte Kirk*, 3 Morrell, 257—C. A.

Examination of Witness—Refusal to produce Letter Book.]—A witness was examined before the Registrar, under section 27 of the Bankruptcy Act, 1883, and produced certain letters torn from a letter-book in his possession, but refused to produce the book itself, as he swore that it contained no letters relating to the debtor, his dealings or property, other than those produced. On an application being made to commit the witness under rule 88 of the Bankruptcy Rules, 1886.

Held: That the answer of the witness must be accepted, as the object of the section was not to enable a trustee by cross-examination to make out a case. *In re Purvis, Ex parte Rooke*, 56 L. T. 579—Cave, J.

And see cases under title *Witness*.

DISQUALIFICATIONS OF BANKRUPT.

The words "misfortune without any misconduct" in section 32, sub-section 2 (*b*) of the Bankruptcy Act, 1883—which provides for the granting of a certificate for the removal of the disqualifications of a bankrupt—mean pure misfortune as distinguished from and without misconduct, and the word "misconduct" in that section is not to be interpreted with reference to section 28 of the Act, or confined to the "conduct" therein specified. The bankrupt, who was the editor of a newspaper, was indicted for a libel and sentenced to three months' imprisonment and to pay the costs of the prosecution. During the time he was in gaol all his property was sold under a bill of sale given for the purposes of the defence, and he subsequently presented his own petition. On appeal from a decision of the County Court Judge refusing a certificate under section 32, sub-section 2 (*b*), of the Bankruptcy Act, 1883.

Held: That the bankruptcy was caused by the libel, the sentence, and the imprisonment; that it was impossible to say that such bankruptcy was caused by misfortune without any misconduct on the bankrupt's

part; and that the refusal of the certificate was right. *In re Burgess, Ex parte Burgess*, 4 Morrell, 186; 57 L. T. 200; 35 W. R. 702—D.

DISTRESS.

Right of.]—The rent of a certain holding was by the lease payable at Midsummer, but by the ordinary course of dealing between the landlord and tenant, payment was deferred until September. Between Midsummer, 1886, and the usual time for payment, the landlord distrained for the rent for 1886, and also for the arrears of rent for 1885.

Held: That the landlord was entitled so to distrain: that section 44 of the Agricultural Holdings Act, 1883, does not say that a landlord shall not distrain for more than a year's rent at a time, but that such landlord shall not distrain for rent which is more than twelve months old: and that by the proviso in the section the rent for 1885 must be deemed to have become due at the usual day of payment, and therefore not to have been due for more than a year before the distress, so that it could be distrained for as well as the rent for 1886. *In re Bew, Ex parte Bull*, 4 Morrell, 94; L. R. 18 Q. B. D. 643; 56 L. J. Q. B. 270; 56 L. T. 571; 35 W. R. 455—D.

Payment to prevent.]—In June, 1886, the debtor executed an assignment for the benefit of his creditors, under which the applicant was employed to prepare a statement of affairs, and it appearing that the landlord was threatening a distress for rent, the applicant upon the instructions of the creditors paid the amount due. In July, 1886, a receiving order was made against the debtor, and repayment of the amount so paid by the applicant for the benefit of the creditors was refused by the official receiver without an order of the Court.

Held: That under the circumstances and looking to the fact that a request signed by a majority in number and value of the creditors had been presented to the official receiver stating their willingness that repayment should be allowed, the Court would make the order. But that the official receiver would be entitled to retain his costs of the hearing out of the amount and hand over the balance to the applicant. *In re Ayshford, Ex parte Lovering*, 4 Morrell, 164; 35 W. R. 652—Cave, J.

DOCUMENT.

Construction of.]—It is a general good rule of construction that where, if nothing were said, there would be a general applied condition, if there is inserted in a document a specific and limited condition, such specific and limited condition was meant to take the place of the general condition.

Thus, where a deed of arrangement, by which a debtor agreed to pay his creditors their debts in full by certain quarterly instalments, contained a clause that if default be made for the space of twenty-one days in paying any one instalment, then, and in such case, it should be lawful for the trustee under the deed by notice in writing to declare such deed void, "and in such event the creditors shall be entitled to enforce their claims as if the said deed had never been made or executed."

Held: That the trustee not having given the said notice, a creditor under the deed was not entitled to serve a bankruptcy notice and present a petition on account of the debt due to him. *In re Clement, Ex parte Goas*, 3 Morrell, 153—C. A.

——A deed of composition executed by a debtor who had filed a bankruptcy petition recited that the debtor was possessed of or entitled to the real and personal estate specified in the schedule, and that in accordance with his desire to pay his creditors 20*s.* in the pound, and in order that the composition should be secured, he had agreed with the trustee to assign to him all the property set forth in the schedule upon the trusts thereinafter contained. By the operative part the debtor, "for effectuating the said desire, and in pursuance of the said agreement," assigned to the trustee "all and singular the several properties, chattels and effects set forth in the said schedule hereto, and all the estate, right, title, interest, claim, and demand" of the debtor "in, to, and upon the said chattels, properties, and effects, *and all other estate (if any)*" of the debtor. The debtor was under the trusts of a post-nuptial settlement, entitled to a life interest in certain property. This life interest was not mentioned in the schedule.

Held: That the general words of the assignment were controlled by the recital which showed that the deed was intended to apply only to the property specified in the schedule, and that the life interest did not pass to the trustee. *In re Moon, Ex parte Dawes*, L. R. 17 Q. B. D. 275; 55 L. T. 114; 34 W. R. 752—C. A.

Discovery of.]—Where application was made by a friendly creditor for discovery of documents, nominally for the purpose of carrying out proceedings to expunge a proof, but in reality for the purpose of reopening, after time for appeal had elapsed, the question as to whether the receiving order had been properly made against the bankrupt or not.

Held: That the application was an attempt by the contrivance of the creditor and the bankrupt, in the interest of the bankrupt, to use the process of the Court to do that which, if the bankrupt himself asked the Court, the Court would not allow to be done: and that the Registrar was

quite right in refusing it. *In re Dashwood, Ex parte Kirk*, 3 Morrell, 257—C. A.

Delivery of.]—Where after the annulment of bankruptcy proceedings application was made by the bankrupt for an order against the trustee to deliver up books and papers and a statement of account, the said trustee, with the solicitors and committee of inspection, having been indicted by the bankrupt for conspiracy in bringing about the bankruptcy with intent to defraud, which indictment was then pending.

Held: That in the face of the criminal proceedings the application could not then be allowed; and that the proper course under the circumstances was to order the case to stand over until after the trial upon the indictment had taken place, or until its abandonment. *In re Palmer, Ex parte Palmer*, 3 Morrell, 267—C. A.

DOMICIL.

Section 6, sub-section 1 (d), of the Bankruptcy Act, 1883, which provides that a creditor shall not be entitled to present a bankruptcy petition against a debtor, unless such "debtor is domiciled in England, or, within a year before the date of the presentation of the petition, has ordinarily resided or had a dwelling-house or place of business in England," must be taken to mean domiciled in England as distinguished from Scotland or Ireland. The onus of proof of the domicil is, in the first instance, on the creditor presenting the petition. It is not sufficient, in order to throw the onus of proof on the other side, for the petitioning creditor to show that the debtor is an officer in the British army on active service out of England, and belongs to a regiment, the head-quarters of which are in England, and bears an English name. A Scotchman or an Irishman does not lose his domicil of origin by accepting a commission in the English army. (*Yelverton's Case*, 29 L. J., P. & M. 34, followed.) *In re Mitchell, Ex parte Cunningham*, 1 Morrell, 137; L. R. 13 Q. B. D. 418; 53 L. J. Ch. 1067; 51 L. T. 447; 33 W. R. 22—C. A.

——Although the onus is on the petitioning creditor to prove the English domicil of the debtor as required by section 6, sub-section 1 (d), of the Bankruptcy Act, 1883, and that the residence of the debtor has been such as to give the Court in which the petition is presented jurisdiction under section 95; nevertheless, if there is no reason to suppose that the debtor will dispute that his domicil is English, or that the petition is presented in the right Court, it is not necessary for the petitioning creditor in the first instance to adduce evidence of either of these facts. *In re Barne, Ex parte Barne*, 3 Morrell, 33; L. R. 16 Q. B. D. 522; 54 L. T. 662—C. A.

ELEGIT.

Notwithstanding the provisions of section 146 of the Bankruptcy Act, 1883, a writ of *elegit* still extends to leaseholds. *Richardson* v. *Webb*, 1 Morrell, 40—D.

——In a case where possession of the goods of a debtor had been taken by the sheriff under a writ of *elegit* on December 22nd, 1883, but no delivery had been made to the judgment creditor prior to January 1st, 1884, when the Bankruptcy Act, 1883, came into operation (by which statute it is provided that writs of *elegit* shall no longer extend to goods).

Held: That the judgment creditor was still entitled to delivery of the goods. *Hough* v. *Windas*, 1 Morrell, 1; L. R. 12 Q. B. D. 224; 53 L. J. Q. B. 165; 50 L. T. 312; 22 W. R. 452—C. A.

——In a case where possession of the goods of a debtor had been taken by the sheriff under a writ of *elegit* on December 22nd, 1883, but no delivery had been made to the judgment creditor prior to the debtor being adjudicated a bankrupt under the Bankruptcy Act, 1883, which came into operation on January 1st, 1884 (by which it is provided that writs of *elegit* shall no longer extend to goods; and, further, that an execution against goods must be completed by seizure and sale in order to entitle the creditor to the benefit of the execution in case of the debtor's bankruptcy.)

Held: That the judgment creditor was not deprived of his right to the delivery of the goods. *In re Windas & Dunsmore, Ex parte Hough*, 1 Morrell, 22; 50 L. T. 212; 32 W. R. 540—Cave, J.

——An execution against lands is "completed by seizure" within section 45, sub-section (2), of the Bankruptcy Act, 1883, as soon as the sheriff has delivered the lands to the execution creditor under a writ of *elegit*, though a receiving order is afterwards made before the sheriff makes a return to the writ. *In re Hobson*, L. R. 33 Ch. D. 493; 55 L. J. Ch. 754; 55 L. T. 255; 34 W. R. 786—V.-C. B.

EVIDENCE.

In support of Petition.]—Where, upon the hearing of a bankruptcy petition against a debtor, the evidence requisite under section 7, sub-section (2), of the Bankruptcy Act, 1883, is adduced, it is not necessary, in the event of the hearing being adjourned, to give at such adjourned hearing similar evidence under the said sub-section. *In re Winby, Ex parte Winby*, 3 Morrell, 108—C. A.

Answers of Bankrupt on Public Examination.]—The answers of a bankrupt on his public examination are not admissible in evidence in

subsequent motions in the same bankruptcy as against parties other than the bankrupt himself. *In re Brunner, Ex parte the Board of Trade,* 4 Morrell, 255; L. R. 19 Q. B. D. 572; 56 L. J. Q. B. 606; 57 L. T. 418; 35 W. R. 719—Cave, J.

Affidavit sworn Abroad.]—When an affidavit or proof in bankruptcy is sworn abroad before a British consul, or vice-consul, a notarial certificate in verification of the signature and qualification of the consul or vice-consul is not required. The notarial certificate is only required when such an affidavit or proof is sworn before a foreign functionary. *In re Magee, Ex parte Magee,* L. R. 15 Q. B. D. 332; 54 L. J. Q. B. 394; 33 W. R. 655—Cave, J.

Report of Official Receiver.]—The report of the official receiver is, under section 18 of the Bankruptcy Act, 1883—as it is under section 28—*primâ facie* evidence of the statements contained in it. *In re Wallace, Ex parte Campbell,* 2 Morrell, 167; L. R. 15 Q. B. D. 213; 54 L. J. Q. B. 382; 53 L. T. 208—C. A.

Vivâ voce.]—An application to be allowed to give *vivâ voce* evidence ought to be made beforehand, and not at the same time with the motion upon the hearing of which it is desired to use such evidence. *In re Genese, Ex parte Kearsley & Co.,* 3 Morrell, 57; L. R. 17 Q. B. D. 1; 55 L. J. Q. B. 325; 34 W. R. 474—Cave, J.

——Where in a case to be heard before the Judge in Bankruptcy it is desired to use *vivâ voce* evidence, the application for leave to give such *vivâ voce* evidence must be made beforehand to the Judge, and not to the Registrar. *In re Hagan & Co., Ex parte Adamson & Ronaldson,* 3 Morrell, 117—Cave, J.

——Where it is desired to use *vivâ voce* evidence at the hearing of a motion, and both parties consent, a written notice to that effect may be given to the clerk of the Court, and application made to the Judge to fix a suitable day for the hearing. But if both parties do not consent, the matter must come on as a motion in the ordinary way. *In re Underhill,* 3 Morrell, 282; L. R. 18 Q. B. D. 115; 35 W. R. 336—Cave, J.

Practice in County Courts.]—The practice by which application to be allowed to give *vivâ voce* evidence must be made beforehand and not at the same time with the motion upon the hearing of which it is desired to use such evidence, applies only to the High Court; and such practice is not intended to apply to the County Courts, or to affect the course of business therein. *In re Wilson, Ex parte Watkinson,* 4 Morrell, 238; 57 L. T. 201; 35 W. R. 668—D.

EXAMINATION.—See *Public Examination—Medical Examination.*

EXECUTION.

Charging Order nisi.]—A charging order upon shares, made under the Statute 1 & 2 Vict. c. 110, s. 14, does not fall within section 45 of the Bankruptcy Act, 1883, and the words in the said section, "an execution against the goods of a debtor," which is to be completed by seizure and sale, do not include such an order. *In re Hutchinson, Ex parte Plowden & Co.*, 3 Morrell, 19; L. R. 16 Q. B. D. 515; 55 L. J. Q. B. 582; 54 L. T. 302; 34 W. R. 475—D.

Seizure and Sale—Interpleader—Completion of Execution.]—Goods of the debtor were taken in execution by the plaintiff under judgment for a sum exceeding 20*l.* The goods having been claimed by a third person, an interpleader order was made on March 16th directing that, unless payment were made or security given by the claimant according to the provisions of the order, the sheriff should sell the goods and pay the proceeds of the sale into Court. The claimant did not comply with the provisions of the order, and ultimately withdrew his claim. On March 28th the goods were sold, and the proceeds paid into Court on April 6th. On April 7th notice of a bankruptcy petition having been presented against the debtor was served on the sheriff, and the debtor was adjudged bankrupt on such petition.

Held: That under sections 45 and 46 of the Bankruptcy Act, 1883, the trustee in bankruptcy of the debtor was entitled as against the plaintiff to the money in Court. *In re Livesey*, L. R. 19 Q. B. D. 285; 56 L. J. Q. B. 645; 36 W. R. 127; 51 J. P. 471—D.

Completion of Execution—Seizure and Sale.]—Where a sheriff has seized goods on behalf of an execution creditor, but is ordered before sale to withdraw in favour of the receiver in an action in the Chancery Division, the execution has not been completed within section 45 of the Bankruptcy Act, 1883, and the goods seized pass to the trustee in bankruptcy of the debtor. *Mackay* v. *Merritt*, 34 W. R. 433—V.-C. B.

Notice to Sheriff—Title to Proceeds of Sale.]—The sheriff was in possession of the goods under several writs of *fi. fa.*—the three first of which according to date were for more than 20*l.*, and the fifth for 12*l.* 13*s.* The sale was held, and the sheriff, having received notice within fourteen days of a bankruptcy petition against the debtor, paid in the proceeds of the sale to the official receiver as trustee in the bankruptcy. The amount of the three prior writs exceeded together the amount realized by the sale. On a claim by the execution creditor under the subsequent writ

for 12*l.* 13*s.*—that he was entitled to be paid the amount of his debt in full.

Held: That it was not the effect of section 46 of the Bankruptcy Act, 1883, to make executions for more than 20*l.* altogether void, but to deprive the execution creditor of the benefit of the execution: that if no bankruptcy had occurred the writs would have been paid in order of date: and that under the Act the sheriff was required to pay over to the trustee in the bankruptcy the amount which would have been appropriated to the first writs. *In re Pearce, Ex parte Crosthwaite,* 2 Morrell, 105; L. R. 14 Q. B. D. 966; 54 L. J. Q. B. 316; 52 L. T. 518; 33 W. R. 614—Cave, J.

Rights of Landlord—Rent.]—On March 11th the goods of the debtor were seized under a *fi. fa.*, and on March 17th they were sold by the sheriff by private contract under an order of the Court to that effect, but they were not removed from the premises by the purchaser until April 10th. On March 23rd a bankruptcy petition was presented against the debtor, and on April 14th a receiving order was made. On April 15th the landlords of the debtor's premises served upon the sheriff a notice requiring him not to remove the goods from such premises until the sum of 116*l.* 8*s.*, arrears of rent due at Christmas, 1884, and Lady-day, 1885, had been paid to them. The sheriff, under section 46, sub-section (2), of the Bankruptcy Act, 1883, handed to the trustee of the bankrupt's estate the proceeds of the sale after deducting the usual costs of execution. On an application for an order directing the sheriff to pay to the landlords the said sum of 116*l.* 8*s.*

Held: That for the rent due at Christmas, 1884, the landlords might have distrained at any time between March 17th and April 10th; and for the rent due on March 25th, the sheriff who quitted the premises on March 17 was not responsible; and that, the landlords having failed to take advantage of the opportunity offered to them, the application must be dismissed with costs. *In re Davis, Ex parte Pollen's Trustees,* 3 Morrell, 27; 55 L. J. Q. B. 217; 54 L. T. 304; 34 W. R. 442—Cave, J.

Payment by Judgment Debtor before Sale—Right to Proceeds.]—On February 3rd, 1886, the sheriff having seized the goods of a debtor under an execution for more than twenty pounds, the debtor on February 4th, before sale, paid him the amount of the debt and costs. Notice was given of this payment to the judgment creditors, who on February 11th assented to the payment and wrote to the sheriff for the money. On February 13th a bankruptcy petition was presented against the debtor, who was adjudicated bankrupt thereon, and the trustee in the bankruptcy

having laid claim to the money so paid, an order was obtained in the County Court directing the sheriff to hand over the amount to such trustee.

Held (on appeal): That the payment out by a debtor of an execution upon his goods is not a "sale" within the meaning of section 46, sub-section (2), of the Bankruptcy Act, 1883: that the money was received by the sheriff for the judgment creditors, who were entitled to it as against the trustee in the bankruptcy: and that the order of the County Court directing the sheriff to pay over the money to such trustee was wrong. *In re Pearson, Ex parte West Cannock Colliery Co.*, 3 Morrell, 187—D.

Notice of Petition after Sale.]—The notice to the sheriff mentioned in section 46, sub-section (2), of the Bankruptcy Act, 1883, must be given either to the sheriff himself, or to some recognised agent of his for the purpose of receiving such notice, such as the under-sheriff or some authorised person at the sheriff's office, and such notice given to an ordinary bailiff or man in possession is not sufficient. The term "officer charged with the execution of a writ or other process" included in the term "sheriff" by section 168 of the Bankruptcy Act, 1883, signifies an officer charged with duties similar to those of a sheriff though he is not called sheriff, as for example, the bailiff of a County Court. In an action in the Mayor's Court the notice should be given at the office of the Serjeant-at-Mace, either to him or to his representative. *In re Holland, Ex parte Warren*, 2 Morrell, 142; L. R. 15 Q. B. D. 48; 54 L. J. Q. B. 320; 53 L. T. 68; 33 W. R. 572—C. A.

Notice to Sheriff of Petition.]—The notice to be served on a sheriff of a bankruptcy petition having been presented against or by the debtor under section 46, sub-section (2), of the Bankruptcy Act, 1883, need not necessarily be in writing. *Curtis* v. *Wainbrook Iron Co.*, 1 C. & E. 351—Grove, J.

Stay of.]—On August 23rd, 1886, judgment was recovered against the debtor, and execution was issued under which the sheriff levied on August 26th. On September 1st a third person having claimed the goods an interpleader order was obtained by the sheriff, under which the claimant paid 120*l.* into Court, and thereupon in pursuance of the order the sheriff withdrew from possession. On September 20th the issue in the interpleader was settled, but on September 27th before such issue was decided the judgment creditor served on the debtor a bankruptcy notice under section 4, sub-section 1 (g) of the Bankruptcy Act, 1883 On an appeal from the decision of the County Court Registrar refusing to set aside this notice.

Held: That when the interpleader order was made, and an issue directed, it was in substance a stay of execution until such issue in the interpleader was decided: and that the creditor not being in a position to issue execution on the judgment was not entitled to serve a bankruptcy notice on the debtor at the date when such notice was served. *In re Ford, Ex parte Ford,* 3 Morrell, 283; L. R. 18 Q. B. D. 369; 56 L. J. Q. B. 188; 56 L. T. 166—D.

——On January 14th, 1887, judgment was recovered against the debtor for 446*l.*, and execution was issued under which the sheriff levied; but a third person having claimed the goods, an interpleader order was obtained, whereby upon payment of 20*l.* into Court by the claimant, the sheriff was directed to withdraw. On March 14th, 1887, a bankruptcy notice under section 4, sub-section 1 (*g*), of the Bankruptcy Act, requiring payment of the debt, was served upon the debtor, but the notice was dismissed by the Registrar of the County Court, on the ground that within the meaning of the section execution had been stayed.

Held (on appeal): That in any event there had been no stay, except as to 20*l.*; that in the case of *In re Ford, Ex parte Ford* (see 3 Morrell, 283), the whole amount of the judgment debt had been levied, and the case was so distinguishable; and that the creditor was entitled to issue a bankruptcy notice.

That the fact that the creditor had omitted to insert his name in the heading of the bankruptcy notice, such heading being left "*Ex parte* . . . ."—the notice being sued out by him in person, and giving complete information on the face of it who the creditor was—did not render the notice invalid.

That the fact of the notice claiming the whole debt of 446*l.* without considering the 20*l.* which might be stayed, only amounted to a formal error which the Court would rectify. *In re Bates, Ex parte Lindsey,* 4 Morrell, 192; 57 L. T. 417; 35 W. R. 668—D.

"*Costs of Execution.*"]—The meaning to be attached to the words "costs of the execution" in sub-section 1 of section 46 of the Bankruptcy Act, 1883, is different to the meaning to be attached to the same words in sub-section 2 of the same section. Under the words "costs of the execution" in sub-section 1, the sheriff is not entitled to poundage. *In re W. & J. Ludford,* 1 Morrell, 131; L. R. 13 Q. B. D. 415; 53 L. J. Q. B. 418; 51 L. T. 240; 33 W. R. 152—Cave, J.

And see also cases collected under title *Elegit.*

EXECUTOR.

Power of, to issue Bankruptcy Notice.]—A bankruptcy notice against a judgment debtor cannot be issued by the executor of a creditor who has obtained final judgment unless such executor has first obtained leave from the Court to issue execution on the judgment under Rule 23 of Order XLII. of the Rules of the Supreme Court, 1883. *In re Woodall, Ex parte Woodall,* 1 Morrell, 201; L. R. 13 Q. B. D. 479; 53 L. J. Ch. 966; 50 L. T. 747; 32 W. R. 774—C. A.

FEES.

Scheme or Composition—Fees.]—The proposal put forward by a debtor provided that all the property of such debtor divisible among his creditors should vest in a trustee, and, subject to the provisions of the scheme, be administered according to the law of bankruptcy: that, in addition, the sum of 100*l.* a year out of a pension of 297*l.* belonging to the debtor should be paid to the trustee under the scheme until, with the rest of the debtor's property, all the costs relating to the bankruptcy should have been paid, and the creditors should have received 15*s.* in the pound upon the amount of their debts: that after payment of 15*s.* in the pound to the creditors upon their debts and of all the costs, charges, and expenses, the trustee should hand over to the debtor the surplus of the estate: and that as from the date of the confirmation of the scheme by the Court the debtor should be released and discharged from all debts provable under the bankruptcy. On the debtor applying to the Court for its approval, the Registrar was in doubt whether such proposal required to be stamped as a composition or a scheme of arrangement, and the question was referred to the Judge for decision.

Held: That the arrangement in question had more of the elements of a scheme than of a composition; and that the fee must be paid on the estimated value of the 100*l.* a year as an asset. *In re Griffith,* 3 Morrell, 111—Cave, J.

County Court—Discharge—Consent to Judgment—Fees.]—Where under the provisions of section 28, sub-section (6) of the Bankruptcy Act, 1883, the discharge of a bankrupt is granted by the County Court judge, subject to the condition that such bankrupt shall consent to judgment being entered against him by the trustee in the bankruptcy for any balance of the debts provable under the bankruptcy which was not satisfied at the date of the order, judgment shall be entered in the County Court, even though the amount is in excess of 50*l.*: and as the judgment is entered in the County Court without any preliminary proceedings, the Registrar is not entitled to demand any fees as in respect thereof on entering such judgment. *In re Howe,* 4 Morrell, 57; L. R. 18 Q. B. D. 573; 56 L. J. Q. B. 257; 35 W. R. 380—Cave, J.

FI. FA.—See *Execution.*

FINAL JUDGMENT.

The words "final judgment" in section 4, sub-section 1 (g), of the Bankruptcy Act, 1883, must be construed in their strict technical sense of a judgment in an action which established a liability previously existing of a debtor to a creditor. A garnishee order absolute is not a "final judgment" against the garnishee within the sub-section, and the judgment creditor who has obtained the order cannot issue a bankruptcy notice against the garnishee in respect of it. *In re Chinery, Ex parte Chinery,* 1 Morrell, 31; L. R. 12 Q. B. D. 342; 53 L. J. Ch. 662; 50 L. T. 342; 32 W. R. 469—C. A.

——The fact that an order has been made against a defendant requiring him to pay the taxed costs in an action within a specified time, does not constitute such order a "final judgment" within the meaning of section 4, sub-section 1 (g), of the Bankruptcy Act, 1883, so as to entitle the plaintiff, in the event of the defendant failing to comply with the terms of the order, to obtain a bankruptcy notice against the defendant founded on the order. *In re Cohen, Ex parte Schmitz,* 1 Morrell, 55 L. R. 12 Q. B. D. 509; 53 L. J. Ch. 1168; 50 L. T. 747; 32 W. R. 812—C. A.

——A "balance order" for the payment of calls upon shares, made on a contributory in the winding-up of a company, is not a "final judgment" within the meaning of section 4, sub-section 1 (g), of the Bankruptcy Act, 1883, so as to enable the liquidator of the company to issue a bankruptcy notice against the contributory in respect of the amount ordered by the balance order to be paid. The case of *In re Sanders, Ex parte Whinney* (see 1 Morrell, 185; L. R. 13 Q. B. D. 476), approved and followed. *In re Tennant, Ex parte Grimwade,* 3 Morrell, 166; L. R. 17 Q. B. D. 357; 55 L. J. Q. B. 495—C. A.

——A creditor who has obtained a final judgment cannot under section 4, sub-section 1 (g), of the Bankruptcy Act, 1883, issue a bankruptcy notice against the judgment debtor, unless such creditor is also in a position to issue immediate execution on the judgment. *In re Ide, Ex parte Ide,* 3 Morrell, 239; L. R. 17 Q. B. D. 755; 55 L. J. Q. B. 484; 35 W. R. 20—C. A.

Executor of original Judgment Creditor.]—A creditor in order to serve a bankruptcy notice under section 4, sub-section 1 (g) of the Bankruptcy Act, 1883, must be entitled and in a position to issue execution; and in consequence a bankruptcy notice against a judgment debtor cannot be issued by the executor of a creditor who has obtained final judgment unless such executor has first obtained leave from the Court to issue

execution on the judgment under Rule 23 of Order XLII. of the Rules of the Supreme Court, 1883. *In re Woodall, Ex parte Woodall*, 1 Morrell, 201; L. R. 13 Q. B. D. 479; 53 L. J. Ch. 966; 50 L. L. 747; 32 W. R. 774—C. A.

Assignee of Judgment Debt.]—The assignee of a judgment debt is not "a creditor" who "has obtained a final judgment" against the judgment debtor within the meaning of section 4, sub-section 1 (g), of the Bankruptcy Act, 1883; and such assignee is not entitled to issue a bankruptcy notice against the debtor in respect of the debt. The words of the said sub-section cannot be extended further than to the personal representative of the creditor who has obtained the judgment: and the decision of the Court of Appeal in the case of *In re Woodall, Ex parte Woodall* (see 1 Morrell, 201; L. R. 13 Q. B. D. 479), did not go further than to such personal representative. *In re Keeling, Ex parte Blanchett*, 3 Morrell, 157; L. R. 17 Q. B. D. 303; 55 L. J. Q. B. 327; 34 W. R. 438—C. A.

Right to issue Second Bankruptcy Notice.]—If execution may be issued on a judgment, a bankruptcy notice under section 4, sub-section 1 (g), of the Bankruptcy Act, 1883, may be issued. Thus, where a bankruptcy notice has been issued in respect of a judgment debt, and withdrawn, a second bankruptcy notice may be issued in respect of the same debt. Judgment for 438*l.* 12*s.* and costs having been recovered against a debtor, the costs were taxed at 37*l.*, and the creditor issued a bankruptcy notice in respect of the judgment debt and costs. An agreement was thereupon come to between the debtor and the creditor, by which the debt and costs were agreed at 500*l.*, and the debtor agreed to pay 100*l.* at once, such 100*l.*, including the 37*l.* taxed costs, 25*l.* costs of the bankruptcy proceedings, and 38*l.*, part of the judgment debt, and the balance of the debt by monthly instalments of 20*l.*; in case any instalment was not duly paid, the whole amount then unpaid to be forthwith due and payable. The 100*l.* and some of the instalments were duly paid; but on default subsequently being made, a bankruptcy notice for the unpaid balance was issued by the creditor.

Held: That the agreement entered into was to the effect that, upon default of payment of any instalment, the unpaid balance was to become due under the judgment, and that the creditor was entitled to issue a bankruptcy notice in respect of the debt. *In re Feast, Ex parte Feast*, 4 Morrell, 37—C. A.

Power of Court to go behind Judgment.]—Upon a petition by a judgment creditor for a receiving order, the Court of Bankruptcy has power, at the instance of the judgment debtor, to go behind the judgment, and

to inquire into the consideration for the judgment debt, even though the debtor has consented to the judgment. If on the hearing of the petition evidence is put forward of such facts, which, if proved, would show that, notwithstanding the judgment, there is by reason of fraud or otherwise, no real debt, the Court ought not to make a receiving order without inquiry into the truth of the facts alleged. *In re Lennox, Ex parte Lennox*, 2 Morrell, 271; L. R. 16 Q. B. D. 315; 55 L. J. Q. B. 45; 54 L. T. 452; 34 W. R. 51—C. A.

——Although upon a petition by a judgment creditor for a receiving order the Court has power, at the instance of the judgment debtor, to go behind the judgment, yet, if the facts alleged by such debtor as a reasen for so doing, are in the opinion of the Registrar immaterial and insufficient, he is right in refusing to hear evidence in support of such facts, and in making a receiving order as prayed. *In re Lipscombe, Ex parte Lipscombe*, 4 Morrell, 43—C. A.

——Although upon a petition by a judgment creditor for a receiving order, the Court has power at the instance of the judgment debtor to go behind the judgment, yet the Court will not do so on the mere suggestion that the judgment debt is bad, if it comes to the conclusion that the objections raised are frivolous. Where on taxation of a bill of costs the debtor offered no evidence of a surcharge carried in by him, and although on application for judgment under Order XIV. for the amount certified he filed an affidavit, alleging that he had a counterclaim, yet did not appeal from the order for judgment then made, but on a bankruptcy petition being presented by the judgment creditors, such debtor was desirous of going into the merits of the surcharge or counterclaim.

Held: That the Registrar was right in refusing to allow the question to be re-opened, and in making a receiving order as prayed. *In re Saville, Ex parte Saville*, 4 Morrell, 277; 35 W. R. 791—C. A.

Appeal pending from Judgment—Stay of Proceedings.]—Where a bankruptcy petition is presented by a creditor, founded on an act of bankruptcy committed by the failure of the debtor to comply with the terms of a bankruptcy notice to pay a judgment debt, and an appeal is pending from such judgment, it is a matter of discretion for the Registrar whether he will make a receiving other, or stay the proceedings; and the Court of Appeal will not interfere unless such exercise of discretion is clearly wrong. *In re Rhodes, Ex parte Heyworth*, 1 Morrell, 269; L. R. 14 Q. B. D. 49; 54 L. J. Q. B. 198; 52 L. T. 201—C. A.

Judgment for Costs.]—Where, in consequence of a breach of covenant of articles of partnership, an action was brought in the Chancery Divi-

sion, and judgment obtained, restraining the defendant from carrying on business within a certain radius—dissolving the partnership—ordering an inquiry as to the amount of damage sustained by the plaintiff—and further ordering the costs of the defendant to be paid—and pending the inquiry as to the damages, the costs were taxed, and only a portion being paid, a bankruptcy notice was served on the debtor under section 4, sub-section 1 (g), of the Bankruptcy Act, 1883, for the remainder.

Held: That the sum in respect of which the bankruptcy notice was served was due under a final judgment within the meaning of the section, the amount in question being wholly independent of the result of the inquiry. *In re Faithfull, Ex parte Moore*, 2 Morrell, 52; L. R. 14 Q. B. D. 627; 54 L. J. Q. B. 190; 52 L. T. 376; 33 W. R. 438—C. A.

Alleged Set-off.]—A debtor against whom action was brought allowed judgment to go by default, but subsequently obtained leave to defend on payment of 43*l.* into Court, which he neglected to do. Judgment was thereupon signed, and a bankruptcy petition presented, and the debtor having refused to give security for the debt as required by the Court, a receiving order was made. On appeal by the debtor to set aside this order under section 4, sub-section 1 (*g*) of the Bankruptcy Act, 1883, on the ground that he had a counterclaim, set-off, or cross-demand, which equalled or exceeded the amount of the judgment debt, and which he could not set-up in the action in which judgment was obtained.

Held: That the debtor had had ample opportunity to set up the alleged set-off in the action, which he had neglected to do: and that the order of the County Court was a right order. *In re Isaac, Ex parte Isaac*, 2 Morrell, 258—D.

FIXTURES.

Where a trustee seeks to disclaim a lease under section 55, the Court may, if it thinks fit, under sub-section 3 of section 55, permit such trustee to remove fixtures. *In re Moser, Ex parte Painter*, 1 Morrell, 244; L. R. 13 Q. B. D. 738; 33 W. R. 16—Wills, J.

A lease of a mill and warehouse made October 1st, 1880, for twenty-one years, contained the following covenants and provisoes:—"That in case the said lessees shall during the said term be bankrupts, or file a petition in liquidation, or make an assignment for the benefit of their creditors, then the said term hereby created shall cease." "That on the determination or cesser of the said term the machinery-room, warehouse and chimney shall be and remain the property of the company, but all the machinery, and also all the other buildings erected by the

lessees, shall be their property, and shall be removed by them previously to the determination or cesser of the said term, unless it shall be then mutually agreed by the said company and the lessees that the company shall purchase them. The said lessees in case the same shall be removed to make good all damage which may be caused in their removal." "That the several articles and things mentioned in the schedule hereto (*consisting of iron columns and beams in boiler-room, wood floor in oil mill, and other articles*), shall be the property of the lessees, and shall be removable by them; the said lessees making good all damage done by such removal." In March, 1884, the lessees presented a bankruptcy petition under the Bankruptcy Act, 1883, upon which a receiving order was made.

Held: 1. That the lessees had taken such steps under the Bankruptcy Act, as, having regard to the provisions of the new Act and to section 149 of it, would justify the lessors in saying that the clause of forfeiture applied, and that consequently the presentation of the petition by the lessees caused a cesser of the term under that proviso.

2. That the official receiver was entitled to the articles mentioned in the clauses above, notwithstanding the forfeiture. *In re Walker, Ex parte Gould, Official Receiver*, 1 Morrell, 168; L. R. 13 Q. B. D. 454; 51 L. T. 368—D.

FORMAL DEFECTS.

In Bankruptcy Notice.]—The fact that the creditor had omitted to insert his name in the heading of the bankruptcy notice, such heading being left "*Ex parte* ——," the notice being sued out by him in person and giving complete information on the face of it who the creditor was —did not render the notice invalid. And the fact of the notice claiming the whole debt of 446*l.* without considering 20*l.*, which under the circumstances of the case might be stayed, only amounted to a formal error which the Court would rectify. *In re Bates, Ex parte Lindsey*, 4 Morrell, 192; 57 L. T. 417; 35 W. R. 668—D.

FRAUDULENT PREFERENCE.

Motive of Debtor—Payment to make good Breach of Trust.]—In order that a payment or transfer of property made by a bankrupt within three months before the presentation of the petition on which he was adjudicated a bankrupt, should amount to a fraudulent preference within section 48 of the Bankruptcy Act, 1883, it is essential that it should have been made by him with a view of giving a preference to the creditor to whom it was made; and it is not sufficient that the creditor was in fact preferred. The Court must, therefore, in each case consider as a question of fact

what was the real or dominant motive of the bankrupt in making the payment or transfer, and if the Court comes to the conclusion that (for example), the bankrupt's real motive was to save himself from exposure or from a criminal prosecution, the payment or transfer is not a fraudulent preference. It is also essential that the relation of debtor and creditor should have existed between the parties at the time when the payment or transfer was made. So a voluntary payment to make good a breach of trust committed by the bankrupt is not within section 48. *In re Goldsmid, Ex parte Taylor*, L. R. 18 Q. B. D. 295; 56 L. J. Q. B. 195; 35 W. R. 148—C. A.

——Where payments are made previous to bankruptcy in restitution of a breach of trust by a person unable to pay his debts as they become due, such payments cannot be recovered by the trustee on the ground of fraudulent preference. The relation of debtor and creditor has been held not to be created between co-trustees, or between a trustee and his *cestui que trust* within the meaning of the fraudulent preference section of the Bankruptcy Act. *In re Hutchinson, Ex parte Ball*, 35 W. R. 264—C. A.

Assignment—Motive of Debtor.]—The debtor, who carried on business at two different premises, within a few days of filing his petition executed an assignment handing over his interest in the lease, goodwill and stock of one of the said premises to a judgment creditor who was threatening to levy execution, such assignment to be in full satisfaction of the whole judgment debt, and the judgment creditor was to redeem the lease of the property, which had been deposited on mortgage with a loan society, and to pay rent due, &c.

Held: That there was no proof that the motive of the debtor was to prefer the creditor; that at the time of the assignment the judgment creditor could seize and have his debt paid out of the goods at both the places of business, of the debtor; that the effect of the assignment was to relieve the debtor of liability at one place of business and could not be deemed to be a fraudulent preference. *In re W. H. Wilkinson, Ex parte the Official Receiver*, 1 Morrell, 65—Cave, J.

——A debtor, on August 28th, 1884, on being pressed by a creditor, who had obtained judgment, for payment of the debt due to him, gave to an auctioneer, who was about to sell the farming stock of such debtor, a document by which he authorised and requested him to pay to such creditor, after deducting any rent which might be due to the landlord, the debt due to him out of the first proceeds of the sale, and appropriated the sum necessary to pay the debt out of the proceeds of the sale for the

purposes of the payment. On October 22nd, 1884, a receiving order was made against the debtor, and the sum so appropriated was subsequently claimed by the official receiver as trustee in the bankruptcy on the grounds (1) That the document was an assignment of the whole of the debtor's property, and as such amounted to an act of bankruptcy; (2) That it was a fraudulent preference.

Held: That under the circumstances of the case the document in question did not amount to an assignment of the whole of the debtor's property.

That the principal motive of the debtor was not to favour the creditor, and that the transaction did not constitute a fraudulent preference.

That the official receiver as trustee having come to the Court was in the same position as an ordinary litigant, and being unsuccessful must pay the costs. *In re Glanville, Ex parte Jenkins,* 2 Morrell, 71; 33 W. R. 523—Cave, J.

Assignment—Payment to Surety.]—On application by the trustee to declare void, on the ground of fraudulent preference, an assignment of certain patent rights and also the payment of a sum of money made by the debtor within three months of a bankruptcy petition being presented against him, to his uncle who had guaranteed the payment of a debt due from such debtor to another person, the objection was raised that the payment now sought to be set aside had been made in consequence of the guarantee and not "in favour of any creditor."

Held: That the assignment was clearly a fraudulent preference; and that, on the facts of the case, the uncle of the debtor at the time of the payment of the said money to him being independently of the guarantee, a creditor for goods sold, such payment was also void under the section.

Quære: Whether if a debtor, within the time limited by the section, makes a payment to a person who has guaranteed a debt due from him to a third party, and which the surety has not then paid, such transaction can be set aside as being a payment made in favour of "any creditor" within section 48 of the Bankruptcy Act, 1883. *In re Bear, Ex parte Official Receiver,* 3 Morrell, 129—Cave, J.

GAMBLING.—See *Speculation.*

GARNISHEE ORDER.

A garnishee order absolute is not a "final judgment" against the garnishee within the meaning of section 4, sub-section 1 (g), so as to make the failure to comply with a bankruptcy notice founded upon it an act of bankruptcy on the part of the garnishee. *In re Chinery, Ex parte*

Chinery, 1 Morrell, 31; L. R. 12 Q. B. D. 342; 53 L. J. Ch. 662; 50 L. T. 342; 32 W. R. 469—C. A.

——Where a judgment creditor obtained a garnishee order in respect of a debt due to the judgment debtor, and a dispute having arisen, payment into Court of the debt to abide further order was directed, and the judgment debtor subsequently became bankrupt.

Held: That such payment into Court to abide further order did not constitute a "receipt of the debt" by which an attachment is completed within section 45, sub-section (2), of the Bankruptcy Act, 1883. *Butler* v. *Wearing*, 3 Morrell, 5; L. R. 17 Q. B. D. 182—Manisty, J.

GIFT INTER VIVOS.

Where at the birth of his eldest son, a father laid down a pipe of port wine, and at the same time expressed an intention to give his eldest daughter certain port wine in particular bins, such wine being thereafter known in the family as the wine of the son and daughter, but remaining in the possession and cellar of the father, who subsequently became bankrupt.

Held: That under the circumstances of the case, there was no proof of any intention on the part of the father of making a present immediate gift, and that the wine belonged to the trustee in the bankruptcy.

That although it is going too far to say that retention of possession by the donor is conclusive proof that there is no immediate present gift, yet unless explained, and its effect destroyed by other circumstances, it is strong evidence against the existence of such an intention; and, in order to rebut this inference, circumstances must be proved from which it can fairly be inferred that the donor intended to make an immediate gift, so that the thing given then ceased to be the donor's, and became the property of the donee. It is not enough to prove circumstances from which the proper inference is, that the donor intended to make a gift in the future, but so that until something further was done to complete the gift, he should retain the control over the thing intended to be given. *In re Ridgway, Ex parte Ridgways*, 2 Morrell, 248; L. R. 15 Q. B. D. 447; 54 L. J. Q. B. 570; 34 W. R. 80—Cave, J.

GUARDIAN.

Ad litem.]—Where it is desired to bring an infant before the Court, the proper course is to apply for the appointment of a guardian *ad litem* for that purpose. Where, on an appeal from a County Court, the Divisional Court in Bankruptcy directs such appeal to stand over in order that certain persons, some of whom are infants, may be made

parties, it would appear that application for the appointment of a guardian *ad litem* should be made to the County Court. *In re Lowndes, Ex parte Trustee,* 3 Morrell, 216—Cave, J.

HOTEL KEEPER.—See *Reputed Ownership.*

HUSBAND AND WIFE.—See *Married Woman.*

INFANT.

Where it is desired to bring an infant before the Court, the proper course is to apply for the appointment of a guardian *ad litem* for that purpose. Where, on an appeal from a County Court, the Divisional Court in Bankruptcy directs such appeal to stand over in order that certain persons, some of whom are infants, may be made parties, it would appear that application for the appointment of a guardian *ad litem* should be made to the County Court. *In re Lowndes, Ex parte Trustee,* 3 Morrell, 216—Cave, J.

INJUNCTION.

An injunction restraining a person, not a party to the bankruptcy proceedings, from dealing with property of the debtor claimed under a bill of sale, the validity of which is disputed, ought not to be granted without requiring an undertaking to be given for damages by the person obtaining the order. *In re F. H. Johnstone, Ex parte Abraham,* 1 Morrell, 32; 50 L. T. 184—Cave, J.

——It is the duty of the Registrar to hear and determine an application made *ex parte* for an injunction, even though at the time of such application the Judge in Bankruptcy may be sitting. *In re Brooks,* 3 Morrell, 62—Cave, J.

INSOLVENT.—See *Administration of Estate of Deceased Insolvent.*

INSURANCE.—See *Medical Examination.*

INTERIM RECEIVING ORDER.—See *Official Receiver.*

INTERPLEADER.—See *Execution—Bankruptcy Notice.*

JUDGMENT.—See *Final Judgment.*

JURISDICTION.

The jurisdiction conferred on the Court of Bankruptcy by section 102 of the Bankruptcy Act, 1883, is the same as that formerly conferred on the Court by section 72 of the Bankruptcy Act, 1869. *In re Lowenthal, Ex parte Beesty*, 1 Morrell, 117; L. R. 13 Q. B. D. 238; 53 L. J. Q. B. 524; 51 L. T. 431; 33 W. R. 138—Cave, J.

Consent to Jurisdiction—Mistake.]—By the proviso to section 102 of the Bankruptcy Act, 1883, it is provided that "the jurisdiction hereby given shall not be exercised by the County Court for the purpose of adjudicating upon any claim, not arising out of the bankruptcy, which might heretofore have been enforced by action in the High Court, unless all parties to the proceeding consent thereto, or the money, money's worth, or right in dispute does not, in the opinion of the Judge, exceed in value 200*l.*" Consent to the jurisdiction was given in ignorance of the fact that an order for summary administration had been made.

Held: That the consent to the jurisdiction was vitiated by the fact that it had been given under a mistaken impression of facts not easily to be ascertained. *In re Sandars, Ex parte Sergeant*, 52 L. T. 516—D.

Where Petition presented in wrong Court.]—Where a bankruptcy petition is presented in the wrong Court by inadvertence, such Court has jurisdiction to hear the petition, and to make a receiving order. *In re Brightmore, Ex parte May*, 1 Morrell, 253; L. R. 14 Q. B. D. 37; 51 L. T. 710; 33 W. R. 598—D.

Adjudication under Bankruptcy Act, 1869.]—On an appeal from decision of Registrar, refusing rehearing of a bankruptcy petition, with a view to the adjudication obtained under the Bankruptcy Act, 1869, being discharged, on the ground that at the time of the presentation of the bankruptcy petition the creditor's right to present it, and the liability of the debtor to be adjudicated a bankrupt under the Act of 1869, had ceased.

Held: That although the adjudication was made on wrong grounds, and was wrong in form, because it was an ordinary adjudication made upon the petition of a creditor under the Bankruptcy Act, 1869, founded on an act of bankruptcy committed by the previous filing of a liquidation petition by the debtor, and under such circumstances the proceedings ought to have been taken under the Bankruptcy Act, 1883, yet the Court would have had jurisdiction to make the adjudication under section 125, sub-section 12, of the Bankruptcy Act, 1869, in consequence of the failure of the liquidation proceedings; and the bankrupt not having raised the objection in the Court below, the adjudication must stand.

In re May, Ex parte May, 1 Morrell, 50; L. R. 12 Q. B. D. 497; 53 L. J. Q. B. 571; 50 L. T. 744; 32 W. R. 839—C. A.

As to Staying Proceedings in another Division.]—Where application made by a bankrupt, who had failed to pay over certain trust moneys in accordance with an order of the Chancery Division, for an order restraining further proceedings on a motion for attachment.

Held: That the application must be refused. If the application had been made by the trustee in the bankruptcy for the benefit of the creditors, there might be some grounds for the Court to interfere. *In re Mackintosh & Beauchamp, Ex parte Mackintosh*, 1 Morrell, 84; L. R. 13 Q. B. D. 235; 51 L. T. 208; 33 W. R. 140—Cave, J.

To make Order of Adjudication on failure of Scheme.]—A debtor having filed a bankruptcy petition against himself, the creditors accepted a scheme of arrangement for the payment of a composition of 20*s.* in the pound, as security for which the debtor assigned to a trustee for the creditors all his property, except certain property included in a post-nuptial settlement made by himself, under which he had a life interest. The value of the property so assigned proved to be much less than the debtor's estimate of it, and was insufficient to pay the creditors 20*s.* in the pound, and they therefore applied for an adjudication of bankruptcy against the debtor with the view of testing the validity of the settlement made by him, and of obtaining possession of the debtor's life interest.

Held: (1) That although it could not be said that the debtor had been guilty of fraud, yet he had misled the creditors by over-estimating the value of his assets; that it would be unjust to the creditors that they should not get 20*s.* in the pound; and that the Court had jurisdiction under section 18, sub-section (11), of the Bankruptcy Act, 1883, to make an order of adjudication under the circumstances.

(2) That although the Court would not make an order of adjudication, if no benefit could possibly result from it to the creditors, yet as it was possible that they might get something more by means of the adjudication in the present case, the order ought to be made. *In re Moon, Ex parte Moon*, 4 Morrell, 263; L. R. 19 Q. B. D. 669; 56 L. J. Q. B. 496; 35 W. R. 743—C. A.

Of Divisional Court.]—Where application was made, pending appeal, for a stay of proceedings on a warrant granted by a County Court, to a Divisional Court of the High Court of Justice of which the Judge to whom Bankruptcy business is assigned was not a member.

Held: That Mr. Justice Cave not being a member of such Divisional Court it had no jurisdiction to hear and decide upon the application.

On application subsequently made to a Divisional Court sitting in bankruptcy, a stay of proceedings granted. *In re Moon*, 3 Morrell, 74—D.

——Where an agreement entered into by a solicitor to conduct certain bankruptcy proceedings on the terms that his costs should not exceed 10*l.* had been declared void by the County Court Judge on the application of such solicitor, and an appeal from this decision having been brought to the Divisional Court in Bankruptcy, the preliminary objection was taken that the Court, sitting as a Court of Appeal in bankruptcy matters only, had no jurisdiction to deal with the question at all.

Held: That the Court had jurisdiction to hear the appeal.

That the fact that the agreement did not contain a provision that the solicitor so employed might continue the bankruptcy proceedings to the end, did not make such agreement unfair or unreasonable, and that the order of the County Court Judge setting aside such agreement must be reversed. *In re Owen, Ex parte Peyton*, 2 Morrell, 87; 52 L. T. 628—D.

——Where an order is made by a Divisional Court in Bankruptcy on an appeal from a County Court and the Registrar of the County Court neglects or refuses to carry out such order, the Divisional Court has no original jurisdiction to make an order on the County Court Registrar directing him to do so. But where an order is made by a Divisional Court in Bankruptcy on an appeal from a County Court, the Registrar of the County Court ought to comply with such order forthwith, and has no right to refuse to comply with it until the time limited for appeal to the Court of Appeal has expired. Thus, where the Divisional Court in Bankruptcy on an appeal from a County Court allowed the appeal, and gave leave to the unsuccessful respondent to appeal to the Court of Appeal, but made an order directing moneys in Court to be paid out, which the Registrar of the County Court declined to do until the time limited for appeal to the Court of Appeal had expired, and an order was in consequence made by the Divisional Court directing him to pay out the moneys in question together with costs, from which order the Registrar appealed.

Held: That the Registrar had no right to refuse to pay out the said moneys, there having been no stay of proceedings under the order of the Divisional Court pending appeal.

But the Registrar was an officer of the County Court: the order of the Divisional Court upon the appeal from the County Court was to be carried out by the County Court; and the Divisional Court had no jurisdiction to make such an order against the Registrar. *In re Wise*,

Ex parte Rowland, 3 Morrell, 174; L. R. 17 Q. B. D. 389; 55 L. J. Q. B. 362; 54 L. T. 722; 34 W. R. 711—C. A.

Of County Court in Bankruptcy.]—By the provisions of sections 100 and 102 of the Bankruptcy Act, 1883, which give to the County Court "for the purposes of its bankruptcy jurisdiction, in addition to the ordinary powers of the Court all the powers and jurisdiction of the High Court," and also "full power to decide all questions of priorities, and all other questions whatsoever whether of law or fact which may arise in any case of bankruptcy," a County Court has no jurisdiction or power to restrain an action in the High Court brought against the trustee of a debtor adjudicated bankrupt in such County Court. *In re Barnett, Ex parte Reynolds & Co.*, 2 Morrell, 147; L. R. 15 Q. B. D. 169; 54 L. J. Q. B. 354; 53 L. T. 448; 33 W. R. 715—C. A.

——The Court of Bankruptcy, in administering the estate of a person dying insolvent under section 125 of the Bankruptcy Act, 1883, will follow the practice of the Chancery Division of the High Court in administration actions; and the County Court in Bankruptcy has no jurisdiction to make an order against a stranger to pay over money, which the Chancery Division of the High Court would not make in an administration action. *In re Crowther, Ex parte Ellis*, 4 Morrell, 305; L. R. 20 Q. B. D. 38; 57 L. J. Q. B. 57; 36 W. R. 189—D.

——On June 8th, 1885, the manager of the debtor, without his knowledge, communicated to a firm of corn-factors, to whom the debtor was indebted for wheat then in his stores, the fact that the debtor was in difficulties, and the firm thereupon bought from the manager all the wheat in the debtor's stores on the usual credit terms. On the same day the debtor sent out by post from another place notices of suspension of payment which were delivered on the following morning to the creditors and also to the debtor's manager. On the facts of the sale of the wheat coming to the knowledge of the debtor he repudiated the transaction, and it was subsequently set aside by the County Court Judge. At the hearing it was objected that the claim did not arise out of the bankruptcy, and as the amount in dispute exceeded 200*l.*, and all parties did not consent, the County Court had no jurisdiction.

Held (on appeal): That the claim did arise out of the bankruptcy; that but for the impending bankruptcy the transaction would never have taken place, and but for the actual bankruptcy it would never have been disputed; and that the decision of the County Court Judge was right. *In re Hawke, Ex parte Scott & Smith*, 3 Morrell, 1; L. R.

16 Q. B. D. 503; 55 L. J. Q. B. 302; 54 L. T. 54; 34 W. R. 167—D.

Where under the provisions of section 28, sub-section (6) of the Bankruptcy Act, 1883, the discharge of a bankrupt is granted by the County Court Judge subject to the condition that such bankrupt shall consent to judgment being entered against him by the trustee in the bankruptcy for any balance of the debts provable under the bankruptcy which was not satisfied at the date of the order, judgment shall be entered in the County Court even though the amount is in excess of 50*l*. As the judgment is entered in the County Court without any preliminary proceedings the Registrar is not entitled to demand any fees as in respect thereof on entering such judgment. *In re Howe*, 4 Morrell, 57; L. R. 18 Q. B. D. 573; 56 L. J. Q. B. 257; 35 W. R. 380—Cave, J.

Of Registrar.]—On application to the Registrar on behalf of the trustee in a bankruptcy under the Bankruptcy Act, 1869, that a solicitor should pay over to such trustee certain moneys alleged to be in his hands, and to belong to the bankrupt's estate, it was objected that under the terms of the Bankruptcy Act, 1883, the Registrar had no jurisdiction to hear the application.

Held: That the Registrar had jurisdiction. *In re Evan Jones*, 1 Morrell, 17; 49 L. T. 745—Mathew, J.

On appeal from an order of the Registrar the effect of which was to set aside as against the trustee in a bankruptcy under the Bankruptcy Act, 1869, a post-nuptial settlement executed by the bankrupt, it was objected that under the provisions of the Bankruptcy Act, 1883, the Registrar had no jurisdiction to make the order.

Held: That the jurisdiction which the registrars in bankruptcy had by delegation or otherwise, under the Bankruptcy Act, 1869, is preserved to them in respect of pending proceedings by section 169, sub-section (3), of the Bankruptcy Act, 1883.

That Rule 264 of the Bankruptcy Rules, 1883, which provides for the exercise of their jurisdiction, is not *ultra vires*, and is properly framed for the purpose of carrying out the intention of the legislature with regard to pending proceedings. *In re Home, Ex parte Edwards*, 2 Morrell, 203; 54 L. J. Q. B. 447—C. A.

Of Board of Trade.]—Although a trustee under a scheme of arrangement has been removed from office, the Board of Trade has power to demand a statement of his receipts and payments as such trustee, and to apply to the Court under section 102, sub-section (5), of the Bankruptcy Act, 1883, to enforce that order in case of neglect or refusal to comply

with it. *In re Rogers, Ex parte the Board of Trade*, 4 Morrell, 67; 35 W. R. 457—Cave, J.

LANDLORD AND TENANT.

Right of Landlord to Distrain.]—The rent of a certain holding was by the lease payable at Midsummer, but by the ordinary course of dealing between the landlord and tenant, payment was deferred until September. Between Midsummer, 1886, and the usual time for payment, the landlord distrained for the rent for 1886, and also for the arrears of rent for 1885.

Held: That the landlord was entitled so to distrain: that section 44 of the Agricultural Holdings Act, 1883, does not say that a landlord shall not distrain for more than a year's rent at a time, but that such landlord shall not distrain for rent which is more than twelve months old: and that by the proviso in the section the rent for 1885 must be deemed to have become due at the usual day of payment, and therefore not to have been due for more than a year before the distress, so that it could be distrained for as well as the rent for 1886. *In re Bew, Ex parte Bull*, 4 Morrell, 94; L. R. 18 Q. B. D. 643; 56 L. J. Q. B. 270; 56 L. T. 571; 35 W. R. 455—D.

Rights of Landlord—Rent.]—On March 11th the goods of the debtor were seized under a *fi. fa.*, and on March 17th they were sold by the sheriff by private contract under an order of the Court to that effect, but they were not removed from the premises by the purchaser until April 10th. On March 23rd a bankruptcy petition was presented against the debtor, and on April 14th a receiving order was made. On April 15th the landlords of the debtor's premises served upon the sheriff a notice requiring him not to remove the goods from such premises until the sum of 116*l.* 8*s.*, arrears of rent due at Christmas, 1884, and Lady-day, 1885, had been paid to them. The sheriff under section 46, sub-section (2), of the Bankruptcy Act, 1883, handed to the trustee of the bankrupt's estate the proceeds of the sale after deducting the usual costs of execution. On an application for an order directing the sheriff to pay to the landlords the said sum of 116*l.* 8*s.*

Held: That for the rent due at Christmas, 1884, the landlords might have distrained at any time between March 17th and April 10th; and for the rent due on March 25th, the sheriff who quitted the premises on March 17th was not responsible; and that, the landlords having failed to take advantage of the opportunity offered to them, the application must be dismissed with costs. *In re Davis, Ex parte Pollen's Trustees,*

3 Morrell, 27; 55 L. J. Q. B. 217; 54 L. T. 304; 34 W. R. 442—Cave, J.

Lease—Proviso for Determination on Bankruptcy—Election of Lessor—Proof.]—When a lease contains a proviso or condition that on breach of any of the covenants such lease "shall cease, determine, and be void to all intents and purposes whatsoever," such words must be construed to mean void at the election of the lessor. Thus, where a lease contained a priviso to the effect that if the lessee should become bankrupt or insolvent, the lease "shall cease, determine, and be void," and, the lessee having become bankrupt, the trustee in the bankruptcy rejected a proof put in by the lessors founded on such lease, upon the ground that on the bankruptcy the lease became void.

Held: That such rejection by the trustee was wrong, and must be reversed. *In re Tickle, Ex parte Leathersellers Co.*, 3 Morrell, 126—Cave, J.

Assignment of Lease—Liability of Assignor for Rent—Proof.]—The assignee of a lease of certain premises having become bankrupt, and rent being in arrear, judgment for the same was recovered against his assignor, who was under covenant to pay such rent. The assignor thereupon proved against the estate of the bankrupt for the amount so paid; and also sought to prove in respect of his contingent liability for the rent during the time the said lease had yet to run. The last-mentioned proof was rejected by the trustee in the bankruptcy.

Held: That the proof must be admitted; and that an estimate must be made by the trustee in the bankruptcy of the value of the liability under section 37, sub-section (4) of the Bankruptcy Act, 1883. *In re Hinks, Ex parte Verdi*, 3 Morrell, 218—Cave, J.

And see also cases collected under title *Disclaimer—Distress—Vesting Order.*

LEASE.

Elegit extends to.]—Notwithstanding the provisions of section 146 of the Bankruptcy Act, 1883, a writ of *elegit* still extends to leaseholds. *Richardson* v. *Webb*, 1 Morrell, 40—D.

Forfeiture of, on Tenant being Bankrupt—Fixtures.]—A lease of a mill and warehouse made October 1st, 1880, for twenty-one years, contained the following covenants and provisoes:—"That in case the said lessees shall during the said term be bankrupts, or file a petition in liquidation, or make an assignment for the benefit of their creditors, then the said term hereby created shall cease: That on the determination or cesser of the said term the machinery-room, warehouse, and

chimney shall be and remain the property of the company; but all the machinery, and also all the other buildings, erected by the lessees, shall be their property, and shall be removed by them previously to the determination or cesser of the said term, unless it shall be then mutually agreed by the said company and the lessees that the company shall purchase them. The said lessees, in case the same shall be removed, shall make good all damage which may be caused in their removal: That the several articles and things mentioned in the schedule hereto (*consisting of iron columns and beams in boiler-room, wood floor in oil-mill, and other articles*), shall be the property of the lessees, and shall be removable by them, the said lessees making good all damage done by such removal." In March, 1884, the lessees presented a bankruptcy petition under the Bankruptcy Act, 1883, upon which a receiving order was made.

Held: (1) That the lessees had taken such steps under the Bankruptcy Act, as having regard to the provisions of the new Act, and to section 149 of it, would justify the lessors in saying that the clause of forfeiture applied, and that consequently the presentation of the petition by the lessees caused a cesser of the term under that proviso; (2) That the official receiver was entitled to the articles mentioned in the clauses above, notwithstanding the forfeiture. *In re Walker, Ex parte Gould,* 1 Morrell, 168; L. R. 13 Q. B. D. 454; 51 L. T. 368—D.

Forfeiture—Election of Lessor.]—When a lease contains a proviso or condition that on breach of any of the covenants such lease "shall cease, determine, and be void to all intents and purposes whatsoever," such words must be construed to mean void at the election of the lessor. Thus, where a lease contained a proviso to the effect that if the lessee should become bankrupt or insolvent, the lease "shall cease, determine, and be void," and, the lessee having become bankrupt, the trustee in the bankruptcy rejected a proof put in by the lessors founded on such lease, upon the ground that on the bankruptcy the lease became void.

Held: That such rejection by the trustee was wrong, and must be reversed. *In re Tickle, Ex parte Leathersellers Co.,* 3 Morrell, 126—Cave, J.

Assignment of—Liability of Assignor for Rent.]—The assignee of a lease of certain premises having become bankrupt, and rent being in arrear, judgment for the same was recovered against his assignor, who was under covenant to pay such rent. The assignor thereupon proved against the estate of the bankrupt for the amount so paid; and also sought to prove in respect of his contingent liability for the rent during the time the said lease had yet to run. The last-mentioned proof was rejected by the trustee in the bankruptcy.

Held: That the proof must be admitted; and that an estimate must be made by the trustee in the bankruptcy of the value of the liability under section 37, sub-section (4), of the Bankruptcy Act, 1883. *In re Hinks, Ex parte Verdi*, 3 Morrell, 218—Cave, J.

LIQUIDATOR.—See *Company.*

LUNATIC.

Committee of, may file Petition on Leave.]—The Court gave leave to the committee of a lunatic to file a petition in bankruptcy under section 4, sub-section 1 (f), of the Bankruptcy Act, 1883, on behalf of the lunatic upon evidence that it would be for the benefit of the lunatic that he should be made a bankrupt, and that the creditors were willing to make him an allowance. *In re James*, L. R. 13 Q. B. D. 332; 53 L. J. Q. B. 575; 50 L. T. 471—C. A.

MANAGER.—See *Special Manager.*

MARRIED WOMAN.

Liability of, to Bankruptcy Laws.]—A married woman who does not carry on a separate trade is not subject to the bankruptcy laws, and a bankruptcy notice under section 4, sub-section 1 (*g*) of the Bankruptcy Act, 1883, cannot be served upon her. *In re Gardiner, Ex parte Coulson*, L. R. 20 Q. B. D. 249; 36 W. R. 142—D.

Separate Trading—Separate Property—Power of Appointment.]—The "separate property" referred to in section 1, sub-section (5) of the Married Women's Property Act, 1882, which provides that "Every married woman carrying on a trade separately from her husband, shall, in respect of her separate property, be subject to the bankruptcy laws in the same way as if she were a *feme sole*," comprises only that which would be her separate property if she were a *feme sole*. Thus, where, by a settlement, real property was vested in a trustee in trust for a married woman—who traded separately from her husband and became bankrupt—for life for her separate use, without restraint on anticipation, with remainder to such persons as she might, whether covert or sole, appoint, and with further trusts in default of appointment, the Court would not compel her to exercise in favour of the trustee in the bankruptcy such power of appointment. *In re Armstrong, Ex parte Armstrong*, 3 Morrell, 193; L. R. 17 Q. B. D. 521; 55 L. J. Q. B. 578; 55 L. T. 538; 34 W. R. 709—C. A.

Proof by.]—Under the provisions of the Married Women's Property Act, 1882, a wife who advances money to her husband out of her separate estate is not entitled, on the bankruptcy of her husband, either to prove or vote until all the other creditors of the bankrupt have been satisfied. In such case it lies on the wife to show that the money has not been advanced to the husband for the purposes of his business. *In re Genese, Ex parte the District Bank*, 2 Morrell, 283; L. R. 16 Q. B. D. 700; 55 L. J. Q. B. 118; 34 W. R. 79—Cave, J.

——Section 3 of the Married Women's Property Act, 1882, by which the claim of a wife for money lent by her to her husband for the purposes of any trade or business carried on by him is, in the event of the husband's bankruptcy, postponed until all claims of the other creditors have been satisfied, applies only where the husband is a sole trader. Thus, where a married woman lends her own moneys to a trading partnership of which her husband is a member, she is entitled on the bankruptcy of the partnership to prove against the joint estate in competition with other creditors. *In re Tuff & Nottingham, Ex parte Nottingham*, 4 Morrell, 116; L. R. 19 Q. B. D. 88; 56 L. J. Q. B. 440; 56 L. T. 573; 35 W. R. 567—Cave, J.

——Section 3 of the Married Women's Property Act, 1882, by which the claim of a wife to a dividend in respect of money lent by her to her husband "for the purpose of any trade or business carried on by him, or otherwise," is, in the event of the husband's bankruptcy, postponed until all claims of other creditors for value have been satisfied, applies only where money has been so lent by a wife to her husband for the purpose of his trade or business. Money lent by a wife to her husband for private purposes may be proved for by her and she may receive a dividend in competition with other creditors. The words "or otherwise" in section 3 of the Married Women's Property Act, 1882, do not refer to the words "for the purpose of any trade or business" in the said section, but they refer to the immediately preceding words "carried on by him." *In re Tidswell, Ex parte Tidswell*, 4 Morrell, 219; 56 L. J. Q. B. 548; 57 L. T. 416; 35 W. R. 669—Cave, J.

Proof for Alimony.]—Where an order is made by the Divorce Court for the future payment of alimony by a husband under the statute 29 & 30 Vict. c. 32, s. 1, such payments are not capable of valuation, and cannot therefore be proved for in the event of the husband being adjudicated bankrupt, but such husband is liable to continue the payments notwithstanding the bankruptcy. *In re Linton, Ex parte Linton*, 2 Morrell, 179; L. R. 15 Q. B. D. 239; 54 L. J. Q. B. 529; 52 L. T. 782; 33 W. R. 714—C. A.

Bankruptcy of Husband—Right of Trustee to Administer to Wife's Estate.]—A husband's right to administer to his wife's estate is not such a right as will vest in the trustee under his bankruptcy. Where the husband of a deceased intestate had left this country and had been adjudicated bankrupt before he had administered to his wife's estate, the Court refused to regard his right to administer as property divisible amongst his creditors under section 44 of the Bankruptcy Act, but made a grant of administration to the wife's estate to the trustee under section 73 of the Court of Probate Act. *In the goods of Turner*, L. R. 12 P. D. 18; 56 L. J. P. 41; 57 L. T. 372; 35 W. R. 384—Butt, J.

Committal of.]—A married woman cannot be committed to prison under section 5 of the Debtors Act, 1869, for non-payment of a judgment recovered against her in an action brought under section 1, sub-section (2) of the Married Women's Property Act, 1882. *In re Morley, Scott* v. *Morley*, 4 Morrell, 286; L. R. 20 Q. B. D. 120; 57 L. J. Q. B. 43; 36 W. R. 67—C. A.

MEDICAL EXAMINATION.

Where application was made under section 19 of the Bankruptcy Act, 1869 (*see section* 24 *of the Bankruptcy Act*, 1883), for an order upon a debtor to answer certain enquiries and to submit to a medical examination for the purpose of life insurance.

Held: That the provisions of the section apply to an examination of the debtor in respect of property; and that the Court could not under the section make an order for the personal examination of the debtor as to the state of health, with a view to insurance. *In re Garnett, Ex parte the Official Receiver*, 2 Morrell, 286; L. R. 16 Q. B. D. 698; 55 L. J. Q. B. 77; 53 L. T. 769; 34 W. R. 79—Cave, J.

——On application by a bankrupt for his discharge under section 28 of the Bankruptcy Act, 1883, the Court has no jurisdiction to take into consideration as "conduct" a refusal on the part of such bankrupt to submit to a medical examination with a view to life insurance for the purpose of enabling the trustee in the bankruptcy to realise to better advantage a contingent reversionary interest of the said bankrupt in certain property. The word "conduct" in section 28 does not include general misconduct, but if not covered by any of the specific instances mentioned in that section, it must be regarded with reference to section 24 of the Act, which defines the duties of the debtor as to the realisation and distribution of his property. *In re Betts & Block, Ex parte the Board of Trade*, 4 Morrell, 170; L. R. 19 Q. B. D. 39; 56 L. J. Q. B. 370; 56 L. T. 804; 35 W. R. 530—C. A.

MEETING OF CREDITORS.

The public examination cannot be concluded until the adjourned first meeting of creditors has been concluded. *In re William Williams*, 1 Morrell, 16—Pepys, R.

——The words "any proceeding in Court" in section 105, sub-section (1), of the Bankruptcy Act, 1883, do not include a second meeting of the creditors under a bankruptcy petition, summoned for the purpose of confirming a scheme of arrangement of the debtor's affairs accepted at the first meeting, and the Court has in consequence no power to order the costs of the petitioner incidental to such second meeting to be paid out of the debtor's estate. But the words do include the public examination of the debtor, and the Court has power to order costs incidental to such public examination to be paid out of the estate. *In re Strand, Ex parte the Board of Trade*, 1 Morrell, 196; L. R. 13 Q. B. D. 492; 53 L. J. Q. B. 563—D.

MORTGAGE.

Application by Equitable Mortgagee for Sale—Conduct of Sale.]—The provisions of Rules 78 to 81 of the Bankruptcy Rules, 1870 (compare Nos. 65 to 69 of the Bankruptcy Rules, 1883), were not intended to fetter the Court in cases where an application has been made to the Court by a mortgagee of property of the bankrupt for a sale of such property as provided by the rules, so as (1) to compel the Court to give the conduct of such sale to the trustee in the bankruptcy; or (2) to compel the Court to give the trustee a first charge on the proceeds of the sale for his costs and expenses in cases where the conduct of the sale has been taken away from him. *In re Jordan, Ex parte Lloyd's Banking Co.*, 1 Morrell, 41; L. R. 13 Q. B. D. 228; 53 L. J. Q. B. 554; 50 L. T. 594; 33 W. R. 153—Cave, J. And compare Rules 73 to 77 of the Bankruptcy Rules, 1886.

Proof by Second Mortgagee.]—In order to enable a mortgagor to obtain a further advance from the first mortgagee on the security of the mortgaged property, the second mortgagee agreed to postpone his charge to a then existing third charge in favour of the first mortgagee, and to the fresh advance. The mortgagor became bankrupt, and when the property was afterwards sold by the first mortgagee, the proceeds of sale were insufficient to pay the whole amount due to him, though they exceeded the amount of the first mortgage.

Held: That the second mortgagee was entitled to prove in the bankruptcy for the amount which he would have received out of the proceeds of sale if he had not consented to postpone his charge, on the ground

that the Court was entitled to infer an implied promise by the bankrupt to indemnify the second mortgagee against any loss which might result from the postponement of his charge. *In re Chappell, Ex parte Ford*, L. R. 16 Q. B. D. 305; 55 L. J. Q. B. 406—C. A.

Amendment of Proof by Mortgagee.]—Where a mortgagee who has valued his security is desirous of amending his valuation and proof under Rule 13 of Schedule II. of the Bankruptcy Act, 1883, leave to amend may be given in a proper case, although such amendment is opposed by a subsequent mortgagee. *In re Arden, Ex parte Arden*, 2 Morrell, 1; L. R. 14 Q. B. D. 121; 51 L. T. 712; 33 W. R. 460—D.

MUTUAL DEALINGS.

As a general rule, and in the absence of special circumstances, where there are mutual dealings between a debtor and his creditors, the line as to set-off must be drawn at the date of the commencement of the bankruptcy. *In re Gillespie, Ex parte Reid & Son*, 2 Morrell, 100; L. R. 14 Q. B. D. 963; 54 L. J. Q. B. 342; 52 L. T. 692; 33 W. R. 707—Cave, J.

——Section 38 of the Bankruptcy Act, 1883, is only applicable where the claims on each side are such as result in pecuniary liabilities. *Eberle's Hotels Company* v. *Jonas*, L. R. 18 Q. B. D. 459; 56 L. J. Q. B. 278; 35 W. R. 467—C. A.

NEWSPAPER.—See *Advertisement.*

NOTICE.

See *Act of Bankruptcy—Official Receiver—Disclaimer—Execution.*

OFFICER.

A compassionate allowance granted to a retired Indian officer by the Secretary of State for India under the powers conferred on him by the Government of India Act, 1858—which said allowance is not provided for in the regulations of the service, and the granting of it does not form one of the terms upon which the service was originally entered upon, but it is a mere act of grace—does not fall within the words of section 53, sub-section (2) of the Bankruptcy Act, 1883, and the Court will not make an order under that section directing a certain sum to be paid thereout to the trustee in the bankruptcy of such officer for the purpose of distribution amongst his creditors. In order that section 53 may apply the payment must be one to which the bankrupt has a legal or equitable claim. *In re Webber, Ex parte Webber*, 3 Morrell, 288;

L. R. 18 Q. B. D. 111; 56 L. J. Q. B. 209; 55 L. T. 816; 35 W. R. 308—D.

——The onus of proof of domicil is, in the first instance, on the creditor presenting the petition. It is not sufficient, in order to throw the onus of proof on the other side, for the petitioning creditor to show that the debtor is an officer in the British army on active service out of England, and belongs to a regiment the head-quarters of which are in England, and bears an English name. A Scotchman or an Irishman does not lose his domicil of origin by accepting a commission in the English army. *In re Mitchell, Ex parte Cunningham*, 1 Morrell, 137; L. R. 13 Q. B. D. 418; 53 L. J. Ch. 1067; 51 L. T. 447; 33 W. R. 22—C. A.

OFFICIAL RECEIVER.

Powers and Duties of.]—The Court does not sit to assist the official receiver or the trustee in simple matters relating to the management of the estate, but it sits for a judicial purpose; and where there is no question of law arising, there is no justification for coming to the Court. The official receiver must be prepared to undertake the proper responsibility of his position, and he has no right in a simple case to come to the Court merely for information. *In re G. & A. Mahler, Ex parte Honygar; In re G. & A. Mahler, Ex parte Charbin*, 1 Morrell, 272—Cave, J.

As to Sale of Bankrupt's Property.]—Before the appointment of a trustee by the creditors the official receiver who is, by section 54 of the Bankruptcy Act, 1883, the trustee for the purposes of that Act until a trustee is appointed, has power, after an adjudication in bankruptcy has been made against a debtor, to exercise the powers given by section 56 of the Act to the trustee. Such official receiver, therefore, may sell the property of the bankrupt. *In re Parker & Parker, Ex parte the Board of Trade*, 2 Morrell, 158; L. R. 15 Q. B. D. 196; 54 L. J. Q. B. 372; 52 L. T. 670—C. A. Confirmed, L. R. 11 App. Cas. 286; 55 L. J. Q. B. 417; 55 L. T. 30—H. L.

As to power to Compromise.]—A debtor on May 6th presented his own petition upon which a receiving order was made, and on May 7th the official receiver took possession of the debtor's property. On June 30th a compromise was entered into between the official receiver and two holders of bills of sale over the property of the debtor. On July 9th the debtor was adjudicated bankrupt, and on July 23rd the certificate of approval of the trustee in the bankruptcy was granted by the Board of

Trade. The trustee subsequently applied to the Court to set aside the compromise.

Held: That on its appearing that the official receiver had the permission of the Board of Trade to make this compromise the application of the trustee must be refused. *In re Johnstone, Ex parte Singleton,* 2 Morrell, 206—D.

As to Appointment of Special Manager.]—The power of appointing a special manager given by section 12 of the Bankruptcy Act, 1883, to the official receiver is entirely a discretionary power; and the Court has no authority to interfere to compel an official receiver who refuses to make such appointment. *In re Frederick Whitaker,* 1 Morrell, 36; 50 L. T. 510—Cave, J.

As to Payment of Wages.]—Although the words in section 40 of the Bankruptcy Act, 1883, which direct the payment in priority of "all wages or salary of any clerk or servant in respect of services rendered to the bankrupt during four months before the date of the receiving order," apply to the four months immediately preceding the date of the receiving order, nevertheless, looking at the fact that one object of the Act was to secure and protect the wages of such clerks or servants, the Legislature must have intended to designate that date at which a bankrupt is deprived of all control over his property and the receipts cease to go into his hands, by the appointment of the official receiver as interim receiver. Therefore, where a bankruptcy petition was presented against a debtor on March 7th, and the official receiver was appointed interim receiver on March 13th, but it was not until August 21st that a receiving order was made and the debtor adjudicated bankrupt; and the official receiver on August 27th paid to a servant of the bankrupt wages in full for four months preceding March 13th, and the trustee applied that the money so paid might be refunded by the official receiver, the application for such repayment was refused.

Held: That the proper course for the trustee to have pursued would have been to report the matter to the Board of Trade in accordance with the provisions of Rule 249 of the Bankruptcy Rules, 1883, and in the event of the Board of Trade declining to take the steps desired, to have moved the Court for an order directing the Board of Trade and the official receiver together to show cause why the moneys should not be refunded. *In re Smith, Ex parte Fox,* 3 Morrell, 63; L. R. 17 Q. B. D. 4; 55 L. J. Q. B. 288; 54 L. T. 307; 34 W. R. 535—Cave, J.

Locus of.]—After a receiving order had been made against a debtor on his own petition, all the creditors were settled with, but were not paid

their debts in full. The debtor thereupon, with the consent of the creditors, but before his public examination was concluded, applied to the Court to have the receiving order rescinded. This application was opposed by the official receiver, on the ground that it should not be made until after the public examination of the debtor had taken place, and the County Court Judge refused the application.

Held (on appeal): That it was in the discretion of the County Court Judge whether he would rescind the receiving order or not; and that, under the circumstances, the discretion was rightly exercised.

That the official receiver had *locus standi* to oppose the application in the County Court, and to appear on the appeal. *In re Leslie, Ex parte Leslie*, 4 Morrell, 75; L. R. 18 Q. B. D. 619; 56 L. T. 569; 35 W. R. 395—D.

——The official receiver has *locus standi* to appeal to the Court of Appeal from the refusal of the Registrar forthwith to adjudge a debtor bankrupt on application made by him for that purpose under Rule 191 of the Bankruptcy Rules, 1886. *In re Reed, Bowen & Co., Ex parte the Chief Official Receiver*, 4 Morrell, 225; L. R. 19 Q. B. D. 174; 56 L. J. Q. B. 447; 56 L. T. 876; 35 W. R. 660—C. A.

Report of.]—A report as to the bankrupt's conduct and affairs signed by the assistant official receiver will be accepted as the "Report of the official receiver," which the Court is required to take into consideration on an application for discharge. *In re Betts & Block, Ex parte the Board of Trade*, 4 Morrell, 170—C. A.: and see *In re Bull*, 2 Morrell, 59—Murray, R.

——Although a Court of Appeal in Bankruptcy will not readily interfere with the exercise of the discretion of a County Court Judge refusing the discharge of a bankrupt, yet if the decision of such Judge is founded solely on the report of the official receiver, and on appeal the statements contained in such report are proved to be unfounded and are capable of explanation, the Court of Appeal will vary the order of the County Court and will grant to the bankrupt his order of discharge, subject to such conditions as in the nature of the case it may think fit. Where in the report of the official receiver it was alleged that the bankrupt had committed six of the offences specified in section 28, sub-section 3 of the Bankruptcy Act, 1883, and the discharge was in consequence absolutely refused, but, on appeal, satisfactory explanations were afforded of all the said charges with the exception of the fact that twenty-three years ago the bankrupt had made a statutory arrangement with his creditors.

Held: That the discharge of the bankrupt should be granted, subject

to a suspension of one day to meet the requirements of the Act in respect of the only offence proved against him. *In re Sultzberger, Ex parte Sultzberger*, 4 Morrell, 82—D.

——On a contention raised that although for the purposes of the discharge of a bankrupt under section 28 of the Bankruptcy Act, 1883, the report of the official receiver is *primâ facie* evidence of the truth of the statements therein contained. Nevertheless for the purposes of the approval of a composition or scheme under section 18, sub-section (6) of the Act, such report is not made *primâ facie* evidence, and that the Registrar ought not to refuse to approve a composition without having the facts mentioned in section 28, sub-section (3), proved by other evidence.

Held: That the report of the official receiver is *primâ facie* evidence for the purposes of section 18, sub-section (6), and that the same proof of the facts referred to in section 28, sub-section (3), which is sufficient in the case of the discharge of a bankrupt under that section would also be sufficient proof in the case of the approval of a composition or scheme under section 18, sub-section (6). *In re Wallace, Ex parte Campbell*, 2 Morrell, 167; L. R. 15 Q. B. D. 213; 54 L. J. Q. B. 382; 53 L. T. 208—C. A.

Report of, in Small Bankruptcy.]—Where the official receiver reports to the Court under section 121 of the Bankruptcy Act, 1883, that the property of a debtor is not likely to exceed in value 300*l.*, such report is *primâ facie* to be acted upon, and the Court ought not, at any rate without some definite reason, to refuse to make an order for summary administration. *In re Horniblow, Ex parte the Official Receiver*, 2 Morrell, 124; 53 L. T. 155—D.

Notice to.]—Where, after a receiving order has been made against a debtor on a bankruptcy notice, the petitioning creditor is settled with, and with his assent the debtor appeals for the purpose of having the receiving order set aside, it would appear that notice should be given to the official receiver, and where this was not done the Court discharged the receiving order as prayed, but directed that the order should not be drawn up for four days, and notice be given to the official receiver so as to enable him to come forward if he thought fit. *In re Fletcher, Ex parte Fletcher*, 4 Morrell, 113—D.

——Where an application is made to transfer the proceedings in a bankruptcy from a County Court to the High Court, or from the High Court to a County Court, notice of such application must be served upon

the official receiver. *In re Jack*, 4 Morrell, 150; L. R. 18 Q. B. D. 682; 35 W. R. 735—Cave, J.

Costs of.]—An official receiver ought not to appear at the hearing of an appeal from a receiving order, unless it is necessary for him to do so for the purpose of bringing some special circumstance to the notice of the Court; and this special circumstance the Court will take into consideration when the costs are applied for. *In re Dixon & Wilson, Ex parte Dixon & Wilson*, 1 Morrell, 98; L. R. 13 Q. B. D. 118; 53 L. J. Ch. 769; 50 L. T. 414; 32 W. R. 837—C. A.

——The official receiver will not be allowed his costs of appeal, even if he was served with notice of appeal, unless his appearance was necessary. *In re White, Ex parte White*, L. R. 14 Q. B. D. 600—C. A.

——When the official receiver has made his report upon a composition or scheme of arrangement his duty is complete, and, except under very particular circumstances, he should not appear on an appeal: if the appearance of the official receiver is essential, the Court will allow the appeal to stand over for that purpose: and unless his appearance is requisite no costs will be allowed to him. *In re Reed, Bowen & Co., Ex parte Reed, Bowen & Co.*, 3 Morrell, 90; L. R. 17 Q. B. D. 244; 55 L. J. Q. B. 244; 32 W. R. 493—C. A.

——Where, before a composition is approved by the Court, the business of the debtor is carried on by the official receiver, who makes payments out of his own pocket and incurs personal liability for the purpose of carrying on such business, the proper order for the Court to make on approving the composition is, that the official receiver shall forthwith deliver up possession of the debtor's estate to the trustee under the composition, and that such trustee shall pay to the official receiver what may be found due to him out of the first assets which come into his hands. *In re Taylor, Ex parte The Board of Trade*, 1 Morrell, 264; 51 L. T. 711—D.

——An order made by a County Court, on the application of the official receiver, setting aside a payment made by a debtor as a fraudulent preference, having been reversed on appeal.

Held: That the costs of the appellants and of the official receiver in both Courts should be paid out of the debtor's assets, the costs of the appellants having priority. *In re Dale, Ex parte Leicestershire Banking Co.*, L. R. 14 Q. B. D. 48; 33 W. R. 354—D.

——The official receiver acting as trustee of an estate being administered in a summary manner under section 121 of the Bankruptcy Act, 1883, on

an unsuccessful motion by him, was ordered personally to pay the costs of the respondent, with liberty to take the costs out of the estate, if any. *In re Glanville, Ex parte Jenkins*, 2 Morrell, 71; 33 W. R. 523—Cave, J. And see *In re Thomas, Ex parte Ystradfodwg Local Board*, 4 Morrell, 295—Cave, J.

——In June, 1886, the debtor executed an assignment for the benefit of his creditors, under which the applicant was employed to prepare a statement of affairs, and it appearing that the landlord was threatening a distress for rent, the applicant, upon the instructions of the creditors, paid the amount due. In July, 1886, a receiving order was made against the debtor, and the official receiver declined to repay the money so advanced by the applicant without an order of the Court.

Held: That under the circumstances, and looking to the fact that a majority of the creditors in number and value were of opinion that the payment made by the applicant was beneficial and should be refunded, repayment ought to be allowed. But that the official receiver was entitled to deduct his costs of the hearing from the amount. *In re Ayshford, Ex parte Lovering*, 4 Morrell, 164; 35 W. R. 652—Cave, J.

Costs of, acting as Solicitor.]—The effect of section 116, sub-section (2), of the Bankruptcy Act, 1883, which provides that no official receiver "shall, during his continuance in office, either directly or indirectly, by himself, his clerk or partner, act as solicitor in any proceeding in bankruptcy," is not limited to cases of the official receiver acting as solicitor by himself, his clerk, or partner, for another person, or on an application for the benefit of the estate, but extends also to cases where the official receiver is acting as solicitor for himself and conducting a case on his own behalf. *In re Taylor, Ex parte the Official Receiver*, 2 Morrell, 127—D.

ORDER AND DISPOSITION.

See cases collected under title *Reputed Ownership.*

PARTICULARS.—See *Discovery.*

PARTNERS.

Judgment against Firm.]—Where final judgment is obtained against a firm, a bankruptcy notice cannot be issued against a member of such firm who has not been served with the writ, and has not appeared, or admitted that he is or has been adjudged to be a partner, unless under Order XLII., Rule 10, of the Rules of the Supreme Court, 1883, leave to issue execution against such partner has been obtained. *In re Ide,*

Ex parte Ide, 3 Morrell, 239; L. R. 17 Q. B. D. 755; 55 L. J. Q. B. 484; 35 W. R. 20—C. A.

Bankruptcy Notice in Name of Partners—Bankruptcy of one Partner before Hearing of Petition.]—After one of two partners had filed a liquidation petition and a receiver had been appointed, a judgment was recovered in an action previously commenced in the names of the two partners against a debtor of the firm. A bankruptcy notice in the names of the two partners was then served on the said debtor. He failed to comply with it within the seven days limited for the purpose, and a bankruptcy petition was presented against him in the names of the two partners. Before this petition came on for hearing, the creditors of the partner who had filed the liquidation petition had resolved on a liquidation by arrangement, and had appointed a trustee of his property.

Held: That though there was a good act of bankruptcy, a receiving order could not properly be made against the said debtor, unless the trustee in the liquidation was joined as a co-petitioner. *In re Owen, Ex parte Owen*, 1 Morrell, 93; L. R. 13 Q. B. D. 113; 53 L. J. Ch. 863; 50 L. T. 514; 32 W. R. 811—C. A.

Bankruptcy of—Transfer of Proceedings.]—On February 4th, 1886, a receiving order was made against one partner in the High Court; and on February 6th, 1886, the other partner presented a petition in a County Court. On an application by the partner against whom a receiving order had been made in the High Court for an order to transfer the proceedings in the County Court against the other partner to the High Court.

Held: That the application for transfer ought to be made to the County Court.

That in any event the application was one which ought to have been made to the Registrar and not to the Judge in Court. *In re Nicholson, Ex parte Nicholson*, 3 Morrell, 46—Cave, J.

Proof against separate Estate of.]—A testator by his will bequeathed so much of his government securities as would produce 250*l.* per annum to trustees for the benefit of his daughter, who subsequently became insane. The trustees, after paying the expenses for the care of the lunatic, allowed a balance to accumulate, and the sum of 564*l.*, received by one of the trustees, was paid by him into a bank in which he was a partner. The partnership firm became bankrupt, and a proof for the 564*l.* in question was lodged by the administrator of the said daughter, who was also a trustee under the will, against the separate estate of the bankrupt trustee.

Held: That proof against the separate estate must be admitted, but without prejudice to any right which the trustee in the bankruptcy might have to claim contribution from the bankrupt's co-trustees. *In re Ridgway, Ex parte Mein*, 3 Morrell, 212—Cave, J.

Joint and Several Contract—Double Proof.]—Two partners entered into a joint and several covenant to pay A. B. a certain sum. The firm having become bankrupt, A. B. tendered proof against the joint estate as well as against the separate estates of the partners.

Held: That there being a joint and several liability, the creditor was entitled to prove against both estates, and that it was immaterial whether the money had been advanced for the purposes of the partnership or not. *In re Lainé, Ex parte Berner*, 56 L. J. Q. B. 153; 56 L. T. 170—Cave, J.

Joint and Several Contract—Joint and Separate Proof.]—Where trust money has been misappropriated by a firm, one of the partners in which is one of the trustees, proof may be made under Rule 18 of the second schedule to the Bankruptcy Act, 1883, both against the joint estate of the firm and also against the separate estate of the member who is a trustee. *In re Parker & Parker, Ex parte Sheppard*, 4 Morrell, 135; L. R. 19 Q. B. D. 84; 56 L. J. Q. B. 338; 57 L. T. 198; 35 W. R. 566—Cave, J.

And see also cases under title *Married Woman*.

PETITION.

Signature of, by Attorney.]—A bankruptcy petition presented by a creditor may be signed on behalf of such creditor by his duly constituted attorney. *In re Wallace, Ex parte Wallace*, 1 Morrell, 246; L. R. 14 Q. B. D. 22; 54 L. J. Q. B. 293; 51 L. T. 551; 33 W. R. 66—C. A.

Mere Trustee cannot present.]—Under the Bankruptcy Act, 1883, the old rule in bankruptcy still remains in force, that where a debt is vested in a mere trustee for an absolute beneficial owner who is capable of dealing with the debt as he pleases, the trustee cannot alone present a bankruptcy petition against the debtor, but the beneficial owner must join in the petition. *In re Hastings, Ex parte Dearle*, 1 Morrell, 281; L. R. 14 Q. B. D. 184; 54 L. J. Q. B. 74; 33 W. R. 440—C. A. And see also *In re Ellis, Ex parte Hinshelwood*, 4 Morrell, 283—C. A.

By Committee of Lunatic.]—The Court gave leave to the committee of a lunatic to file a petition in bankruptcy under section 4, sub-section 1 (f), of the Bankruptcy Act, 1883, on behalf of the lunatic, upon

evidence that it would be for the benefit of the lunatic that he should be made a bankrupt, and that the creditors were willing to make him an allowance. *In re James*, L. R. 12 Q. B. D. 332; 53 L. J. Q. B. 575; 50 L. T. 471—C. A.

Failure to comply with Terms of Bankruptcy Notice—Creditor entitled to Petition.]—Where by failing to comply with the terms of a bankruptcy notice, a debtor has committed an act of bankruptcy under section 4, sub-section 1 (g), of the Bankruptcy Act, 1883, any creditor may avail himself of such act of bankruptcy for the purpose of presenting a petition; and the right to present a petition is not limited to that creditor by whom the bankruptcy notice has been served. *In re Hastings, Ex parte Dearle*, 1 Morrell, 281; L. R. 14 Q. B. D. 184; 54 L. J. Q. B. 74; 33 W. R. 440—C. A.

Notice to Sheriff of.]—The notice to be served on a sheriff of a bankruptcy petition having been presented against, or by the debtor under section 46, sub-section (2), of the Bankruptcy Act, 1883, need not necessarily be in writing. *Curtis* v. *Wainbrook Iron Co.*, 1 C. & E. 351—Grove, J.

Petition by Creditor—Evidence.]—Where upon the hearing of a bankruptcy petition against a debtor, the evidence requisite under section 7, sub-section (2), of the Bankruptcy Act, 1883, is adduced, it is not necessary, in the event of the hearing being adjourned, to give at such adjourned hearing similar evidence under the said sub-section. *In re Winby, Ex parte Winby*, 3 Morrell, 108—C. A.

Right of Debtor to instruct Solicitor to oppose.]—On the presentation of a bankruptcy petition against a debtor, and an order for the appointment of an interim receiver having been made, such debtor instructed his solicitor to oppose the petition, and to move to rescind the interim order, and then paid to such solicitor at his request 25*l.* on account of costs of counsel's fees, and other expenses for that purpose. The application to rescind the interim order was dismissed, and the debtor was subsequently adjudicated bankrupt. The trustee in the bankruptcy thereupon claimed the 25*l.* from the solicitor as money received by him from the debtor with knowledge of the act of bankruptcy on which the receiving order was made.

Held: That the application of the trustee must be refused; that it was right that a debtor should have legal assistance and advice against a bankruptcy petition; and that a debtor would be left practically defenceless if money paid to a solicitor for services rendered on such an occasion could afterwards be recovered by the trustee. *In re Sinclair*,

Ex parte Payne, 2 Morrell, 255; L. R. 15 Q. B. D. 616; 53 L. T. 767—Cave, J.

Death of Debtor before Service of.]—Where a debtor dies after a bankruptcy petition has been presented against him by a creditor, but before the petition has been served, all further proceedings on such petition must be stayed. *In re Easy, Ex parte Hill & Hymans*, 4 Morrell, 281; L. R. 19 Q. B. D. 538; 56 L. J. Q. B. 624; 35 W. R. 819—C. A.

Petition by Debtor—Death of Debtor.]—Where a debtor died two days after presenting his petition in the County Court, and at the subsequent first meeting of the creditors, resolutions were passed that the proceedings be continued, and the estate administered by a trustee, as if such debtor were alive, and had been adjudicated bankrupt, but the County Court Judge declined to confirm such resolutions, and stated a case for the opinion of the High Court.

Held: That the intention of the Legislature in framing section 108 of the Bankruptcy Act, 1883, which provides for the continuance of proceedings on the death of a debtor by or against whom a bankruptcy petition has been presented, was to meet a case of this nature; and that the proper course for the Court to pursue, in the absence of any arrangement on the part of the representatives of the deceased debtor, was to make an order of adjudication against him, and allow the matter to proceed in the ordinary way. *In re Walker, Ex parte Sharpe*, 3 Morrell, 69; 54 L. T. 682; 34 W. R. 550—D.

Withdrawal of—Payment in Full.]—In a case where after a petition had been filed by a debtor in the County Court, the unsecured creditors of such debtor had been paid in full, and an application was in consequence made to withdraw the petition, which application the County Court Judge refused to grant, on the ground that he was doubtful as to his power to do so.

Held: That there was clear jurisdiction to grant the application. *In re Wemyss, Ex parte Wemyss*, 1 Morrell, 157; L. R. 13 Q. B. D. 244; 53 L. J. Q. B. 496; 32 W. R. 1002—D.

Substituted Service of.]—On appeal from an order directing that publication of a notice in the *London Gazette*, and in the *Times* newspaper, should be deemed to be good service of a bankruptcy petition upon the debtor.

Held: That under Rule 154, and Form 16 of the Bankruptcy Rules, 1886, the Registrar on being satisfied that the debtor was avoiding personal service, had jurisdiction to make the order in question; and that

upon the facts of the case there was no ground for the appeal. *In re Collinson, Ex parte Collinson*, 4 Morrell, 161—C. A.

Presented in wrong Court.]—Where a bankruptcy petition is presented in the wrong Court by inadvertence, such Court has jurisdiction to hear the petition, and to make a receiving order. *In re Brightmore, Ex parte May*, 1 Morrell, 253; L. R. 14 Q. B. D. 37; 51 L. T. 710; 33 W. R. 598—D.

Amendment of.]—At the hearing of a bankruptcy petition, the objection was raised on behalf of the debtor, that the petitioning creditor was a mere trustee for his father; and the Registrar, after hearing the evidence, having come to that conclusion, the petition was dismissed, without leave to amend.

Held (on appeal): That although the Registrar was justified on the case before him in coming to the conclusion to which he did, yet as a matter of indulgence leave to amend the petition by joining the father would be granted.

But such leave must be subject to the condition that all costs thrown away by his not being joined should be paid by the father within one month, including the costs of the appeal. *In re Ellis, Ex parte Hinshelwood*, 4 Morrell, 283—C. A.

And compare *In re Hastings, Ex parte Dearle*, 1 Morrell, 281; L. R 14 Q. B. D. 184; 54 L. J. Q. B. 74; 33 W. R. 440—C. A.

Dismissal of.]—After a bankruptcy petition had been presented, but before the day appointed for the hearing, the debtor obtained the consent of the petitioning creditors to an adjournment of such hearing with a view to a settlement, and a form of consent to an extension of time was sent to the County Court Registrar, but on the day appointed for the hearing the Registrar dismissed the petition for non-appearance. Notice of appeal having been given by the petitioning creditors the debtor filed his own petition, on which a receiving order was made. When the appeal came on for hearing an adjournment was taken by consent, in order that a scheme of arrangement proposed by the debtor might be considered, but this subsequently fell through, and the petitioning creditors now proceeded with their appeal, a year after notice thereof had been given.

Held: That the delay which had occurred was fatal to the appeal; and that no sufficient reason having been put forward to justify the Court in hearing it, notwithstanding such delay, the appeal must be dismissed with costs. *In re Gamlen, Ex parte Ward & Co.*, 4 Morrell, 301—D.

——The fact that, before the presentation of a bankruptcy petition against a debtor, a large number of the creditors have assented to a deed of arrangement, is not a "sufficient cause" within the meaning of section 7, sub-section (3) of the Bankruptcy Act, 1883, for dismissing such petition presented by a dissenting creditor, however beneficial to the creditors the terms of such arrangement may be; and, in consequence, there is no jurisdiction to adjourn generally the hearing of such petition with a view to its ultimate dismissal if the arrangement should be found to work well. The case of *In re Dixon & Wilson, Ex parte Dixon & Wilson* (see 1 Morrell, 98), approved and explained, to the effect that the decision there did not depend upon the particular terms of the arrangement, but upon the fact that such arrangement was made at the time, and in the manner, and by the persons by whom it was made. *In re Watson & Smith, Ex parte Oram*, 2 Morrell, 199; L. R. 15 Q. B. D. 399; 52 L. T. 785; 33 W. R. 890—C. A.

POUNDAGE.—See *Execution.*

PREFERENTIAL CLAIM.

For Wages.]—The general foreman and overlooker of a brickyard, in which he also worked, instead of weekly wage, undertook the manufacture of bricks by piecework, and to be paid so much per thousand for bricks produced. For this purpose he continued to employ the men who had been working for the bankrupt at the same rate of wages, other persons being engaged and paid separately by the bankrupt to do part of the work. He also continued exclusively in the service of the bankrupt and to act as general manager of the brickworks, but without special remuneration therefor. He was liable to be discharged at a week's notice by the bankrupt, who had the right to discharge and engage all men working in the yard and to make alterations in the rate paid per thousand for the bricks.

Held: That the position occupied by such person was that of a workman within the meaning of section 40, sub-section 1 (c), of the Bankruptcy Act, 1883, and not that of a contractor: and that he was entitled in priority under that section to the wages due to him in respect of services rendered to the bankrupt before the receiving order was made. *In re Field, Ex parte Hollyoak*, 4 Morrell, 63; 35 W. R. 396—Cave, J.

——Although the words in section 40 of the Bankruptcy Act, 1883, which direct the payment in priority of "all wages or salary of any clerk or servant in respect of services rendered to the bankrupt during four months before the date of the receiving order," apply to the four

months immediately preceding the date of the receiving order, nevertheless, looking at the fact that one object of the Act was to secure and protect the wages of such clerks or servants, the Legislature must have intended to designate that date at which a bankrupt is deprived of all control over his property and the receipts cease to go into his hands, by the appointment of the official receiver as interim receiver. Therefore, where a bankruptcy petition was presented against a debtor on March 7th, and the official receiver was appointed interim receiver on March 13th, but it was not until August 21st that a receiving order was made and the debtor adjudicated bankrupt; and the official receiver on August 27th paid to a servant of the bankrupt wages in full for four months preceding March 13th, and the trustee applied that the money so paid might be refunded by the official receiver, the application for such repayment was refused.

Held: That the proper course for the trustee to have pursued would have been to report the matter to the Board of Trade in accordance with the provisions of Rule 249 of the Bankruptcy Rules, 1883, and in the event of the Board of Trade declining to take the steps desired, to have moved the Court for an order directing the Board of Trade and the official receiver together to show cause why the moneys should not be refunded. *In re Smith, Ex parte Fox,* 3 Morrell, 63; L. R. 17 Q. B. D. 4; 55 L. J. Q. B. 288; 54 L. T. 307; 34 W. R. 535—Cave, J.

For Local Rate.]—On January 17th, 1887, when a receiving order was made and adjudication took place, the bankrupt was tenant of a house and shop which he held under a lease for twenty-one years. The trustee in the bankruptcy did not disclaim the lease, but on February 1st, 1887, he sold his interest in it, the bankrupt remaining in occupation as tenant under the purchaser. At the date of the receiving order there was due from the bankrupt a local board rate made on October 8th, 1886, for the half-year from September 30th, 1886, to March 25th, 1887, and payable in advance.

Held: That the estate of the bankrupt was liable to pay the rate for the whole half-year; and not merely an apportioned part of it up to the date of the order of adjudication. *In re Thomas, Ex parte Ystradfodwg Local Board,* 4 Morrell, 295; 36 W. R. 143—Cave, J.

PROCESS.—See *Abuse of Process.*

PROOF.

Amendment of.]—Where a mortgagee who has valued his security is desirous of amending his valuation and proof under Rule 13 of Schedule 2

of the Bankruptcy Act, 1883, leave to amend may be given in a proper case, although such amendment is opposed by a subsequent mortgagee. *In re Arden, Ex parte Arden*, 2 Morrell, 1; L. R. 14 Q. B. D. 121; 51 L. T. 712; 33 W. R. 460—D.

——Where an application made by a secured creditor for leave to withdraw or amend his proof put in from inadvertence for the full amount of the debt, and without mentioning the security, was refused by the County Court Judge.

Held: That there was clearly no intention to give up the security, and that proof for the full amount of the debt having been put in from inadvertence, leave to amend ought to have been granted. *In re King, Ex parte Mesham*, 2 Morrell, 119—D.

——Where a valuation was put upon a security by a creditor which, owing to the death of the bankrupt, greatly increased in value, such creditor was entitled to amend his valuation under Rule 13 of Schedule II. of the Bankruptcy Act, 1883, notwithstanding that the trustee in the bankruptcy had stated to the creditor that he intended to purchase the security at his valuation, but the purchase-money had not been paid. The words of the said Rule 13, which provides that a secured creditor may amend the valuation of his security made in his proof of debt "at any time," are to be limited to the extent that the right cannot be exercised after the trustee in the bankruptcy has actually paid for the security at the valuation set upon it by the creditor. A further limitation may also arise if, under Rule 12 (c) of Schedule II., the creditor, by notice in writing, puts the trustee to his election whether he will redeem the security or not, and the trustee has declared his election to purchase the security at the creditor's valuation. *In re Sadler, Ex parte Norris*, 3 Morrell, 260; L. R. 17 Q. B. D. 728; 56 L. J. Q. B. 93; 35 W. R. 19—C. A.

——Although the time allowed for appeal in bankruptcy matters may be extended by the Court, yet some ground must always be shown why this should be done, and notwithstanding the fact that when a *bonâ fide* mistake has been committed in the estimation of a proof, the trustee in the bankruptcy ought not to be permitted to take a technical advantage of such mistake, where a creditor for more than a year and a half took no steps to reverse the decision of the County Court Judge refusing to allow such creditor to amend or withdraw his proof alleged to be so wrongly estimated, the Court could not permit him to reopen the case for the purpose of setting aside that decision. *In re Tricks, Ex parte Charles*, 3 Morrell, 15—Cave, J.

For Alimony.]—Where an order is made by the Divorce Court for the future payment of alimony by a husband under the statute 29 & 30 Vict. c. 32, s. 1, such payments are not capable of valuation, and cannot therefore be proved for in the event of the husband being adjudicated bankrupt, but such husband is liable to continue the payments notwithstanding the bankruptcy. *In re Linton, Ex parte Linton*, 2 Morrell, 179; L. R. 15 Q. B. D. 239; 54 L. J. Q. B. 529; 52 L. T. 782; 33 W. R. 714; 49 J. P. 597—C. A.

For Contingency.]—The assignee of a lease of certain premises having become bankrupt and rent being in arrear, judgment for the same was recovered against his assignor, who was under covenant to pay such rent. The assignor thereupon proved against the estate of the bankrupt for the amount so paid; and also sought to prove in respect of his contingent liability for the rent during the time the said lease had yet to run. The last-mentioned proof was rejected by the trustee in the bankruptcy.

Held: That the proof must be admitted: and that an estimate must be made by the trustee in the bankruptcy of the value of the liability under section 37, sub-section (4), of the Bankruptcy Act, 1883. *In re Hinks, Ex parte Verdi*, 3 Morrell, 218—Cave, J.

For Costs.]—On July 15th, 1884, an order was made by consent by which all matters in dispute in an action were referred to arbitration, the costs to be in the discretion of the said arbitrator. On November 15th, 1884, during the continuance of the arbitration proceedings, the defendant debtor became bankrupt, and on January 21st, 1885, the trustee in the bankruptcy wrote to the arbitrator as follows:—"I give you notice that I as trustee deny any agreement of reference or that any award therein is or will be binding on me, and so far as I have the power I revoke your authority." On February 26th, 1885, the arbitrator gave his decision, by which he awarded to the plaintiff in the action a certain sum, and ordered that all costs should be paid by the defendant. A proof for the said costs having been rejected by the trustee in the bankruptcy and also by the County Court Judge.

Held (on appeal): That the bankruptcy did not operate as a revocation of the submisson: that the trustee had no power to revoke the authority: and that the creditor was entitled to prove for the costs in question. *In re Smith, Ex parte Edwards*, 3 Morrell, 179—D.

——On December 18th, 1886, a receiving order was made against the debtor. On December 20th, 1886, verdict and judgment for the defendants was given in an action previously brought by the debtor. On February 6th, 1887, a proof for the costs in the action was tendered by

the defendants against the estate, and at a subsequent meeting of creditors, a proposal of the debtor for a scheme of arrangement was rejected by reason of the vote given by the defendants at the meeting, and the debtor became bankrupt.

Held: (1) That under the circumstances the bankrupt had *locus standi* to apply to the Court under Rule 25 of the Second Schedule to the Bankruptcy Act, 1883, to expunge the proof.

——(2) That the debt for which proof was made was not a debt provable in the bankruptcy, and that the proof must therefore be expunged. *In re Bluck, Ex parte Bluck*, 4 Morrell, 273; 56 L. J. Q. B. 607; 57 L. T. 419; 35 W. R. 720—Cave, J.

For Re-exchange.]—Where six bills of exchange were drawn in Tobago, accepted by the debtors, and made payable at the London and Westminster Bank, but were subsequently dishonoured, and thereupon sent back to Tobago, and taken up by the drawers, who sought to prove for the re-exchange against the debtor's estate.

Held: That subject to the damages being proved, the claim ought to be admitted: that the re-exchange mentioned in section 57 of the Bills of Exchange Act, 1882, was simply the difference between English and foreign currency, and that under that Act the claim was still admissible. *In re Gillespie, Ex parte Roberts*, 2 Morrell, 278; L. R. 16 Q. B. D. 702; 55 L. J. Q. B. 131; 53 L. T. 770; 34 W. R. 258—Cave, J. And see L. R. 18 Q. B. D. 286; 56 L. J. Q. B. 74; 56 L. T. 599; 35 W. R. 128—C. A.

By Wife.]—Under the provisions of the Married Women's Property Act, 1882, a wife who advances money to her husband out of her separate estate is not entitled, on the bankruptcy of the husband, either to prove or vote until all the other creditors of the bankrupt have been satisfied. In such case it lies on the wife to show that the money has not been advanced to the husband for the purposes of his business. *In re Genese, Ex parte the District Bank*, 2 Morrell, 283; L. R. 16 Q. B. D. 700; 55 L. J. Q. B. 118; 34 W. R. 79—Cave, J.

——Section 3 of the Married Women's Property Act, 1882, by which the claim of a wife for money lent by her to her husband for the purposes of any trade or business carried on by him is, in the event of the husband's bankruptcy, postponed until all claims of the other creditors have been satisfied, applies only where the husband is a sole trader. Thus, where a married woman lends her own moneys to a trading partnership of which her husband is a member, she is entitled on the bankruptcy of the partnership to prove against the joint estate in compe-

tition with other creditors. *In re Tuff & Nottingham, Ex parte Nottingham*, 4 Morrell, 116; L. R. 19 Q. B. D. 88; 56 L. J. Q. B. 440; 56 L. T. 573; 35 W. R. 567—Cave, J.

——Section 3 of the Married Women's Property Act, 1882, by which the claim of a wife to a dividend in respect of money lent by her to her husband "for the purpose of any trade or business carried on by him, or otherwise," is, in the event of the husband's bankruptcy, postponed until all claims of other creditors for value have been satisfied, applies only where money has been so lent by a wife to her husband for the purpose of his trade or business. Money lent by a wife to her husband for private purposes may be proved for by her, and she may receive a dividend in competition with other creditors. The words "or otherwise" in section 3 of the Married Women's Property Act, 1882, do not refer to the words "for the purpose of any trade or business" in the said section, but they refer to the immediately preceding words "carried on by him." *In re Tidswell, Ex parte Tidswell*, 4 Morrell, 219; 56 L. J. Q. B. 548; 57 L. T. 416; 35 W. R. 669—Cave, J.

By Liquidator.]—On appeal from the rejection by the trustee in the bankruptcy of a proof of debt carried in by the liquidator of a mutual insurance company for the sum of 85*l.*, the amount due from the bankrupts as contributors in respect of calls, and also for the estimated sum of 100*l.* for further calls which had accrued before the date of the receiving order, but had not been then ascertained, the County Court Judge allowed the proof as to the 85*l.*, and directed the proof as to the 100*l.* to stand over. On July 30th, 1886, proof for the ascertained sum of 74*l.* in substitution for the 100*l.* was tendered, and was rejected by the trustee on the ground (1) that the claim was made too late by reason of the fact that on July 9th, 1886, notice to declare a dividend had been inserted in the *Gazette*, by which July 28th was specified as the last day for claims to be sent in; and (2) that the alleged claim had already been adjudicated upon by the Court.

Held: That the notice in question did not prevent the creditor from making the claim; and that the proof in respect of the further calls was not *res judicata* and must be allowed. *In re Shepherd & Leech, Ex parte Whitehaven Assurance Co.*, 4 Morrell, 130—D.

By Mortgagee.]—In order to enable a mortgagor to obtain a further advance from the first mortgagee on the security of the mortgaged property, the second mortgagee agreed to postpone his charge to a then existing third charge in favour of the first mortgagee, and to the fresh advance. The mortgagor became bankrupt, and when the property was

afterwards sold by the first mortgagee, the proceeds of sale were insufficent to pay the whole amount due to him, though they exceeded the amount of the first mortgage.

Held: That the second mortgagee was entitled to prove in the bankruptcy for the amount which he would have received out of the proceeds of the sale if he had not consented to postpone his charge, on the ground that the Court was entitled to infer an implied promise by the bankrupt to indemnify the second mortgagee against any loss which might result from the postponement of his charge. *In re Chappell, Ex parte Ford,* L. R. 16 Q. B. D. 305; 55 L. J. Q. B. 406—C. A.

Against Separate Estate.]—A testator by his will bequeathed so much of his government securities as would produce 250*l.* per annum to trustees for the benefit of his daughter, who subsequently became insane. The trustees, after paying the expenses for the care of the lunatic, allowed a balance to accumulate, and the sum of 564*l.*, received by one of the trustees, was paid by him into a bank in which he was a partner. The partnership firm became bankrupt, and a proof for the 564*l.* in question was lodged by the administrator of the said daughter, who was also a trustee under the will, against the separate estate of the bankrupt trustee.

Held: That proof against the separate estate must be admitted, but without prejudice to any right which the trustee in the bankruptcy might have to claim contribution from the bankrupt's co-trustees. *In re Ridgway, Ex parte Mein,* 3 Morrell, 212—Cave, J.

Joint and Separate.]—Where trust money has been misappropriated by a firm, one of the partners in which is one of the trustees, proof may be made under Rule 18 of the second schedule to the Bankruptcy Act, 1883, both against the joint estate of the firm and also against the separate estate of the member who is a trustee. *In re Parker, Ex parte Sheppard,* 4 Morrell, 135; L. R. 19 Q. B. D. 84; 56 L. J. Q. B. 338; 57 L. T. 198; 35 W. R. 566—Cave, J.

Double.]—Two partners entered into a joint and several covenant to pay A. B. a certain sum. The firm having become bankrupt, A. B. tendered proof against the joint estate as well as against the separate estates of the partners.

Held: That there being a joint and several liability the creditor was entitled to prove against both estates, and that it was immaterial whether the money had been advanced for the purposes of the partnership or not. *In re Lainé, Ex parte Berner,* 56 L. J. Q. B. 153; 56 L. T. 170—Cave, J.

Sworn Abroad.]—When an affidavit or proof in bankruptcy is sworn abroad before a British Consul or Vice-Consul, a notarial certificate in verification of the signature and qualification of the consul or vice-consul is not required. The notarial certificate is only required when such an affidavit or proof is sworn before a foreign functionary. *In re Magee, Ex parte Magee,* L. R. 15 Q. B. D. 332; 54 L. J. Q. B. 394; 33 W. R. 655—Cave, J.

Reduction of.]—The trustees of a will, who were also residuary legatees, made use of the trust estate for their own purposes, and a summons was subsequently taken out in the Chancery Division to get in the estate under which a receiver was appointed. On the day of the hearing of the summons one of the trustees filed his own petition in bankruptcy. An account having been taken of the sum due in respect of the estate which had come into the hands of the trustees, the receiver sought to prove for such sum against the estate of the bankrupt.

Held: That the bankrupt had at the date of the receiving order a right of set-off to the amount of his own share as legatee, and that the proof in question must be reduced by such amount. *In re Chapman, Ex parte Parker,* 4 Morrell, 109; 35 W. R. 595—D.

Rejection of.]—Where at the first meeting of the creditors of a bankrupt, the chairman rejects the proof tendered by a creditor for the sum at which the bankrupt has entered and sworn to the debt in his statement of affairs, and the creditor appeals from such rejection, the bankrupt has no *locus standi* to appear and oppose the appeal, even though he may have been served with notice of the appeal; but it would seem that the bankrupt will be entitled to his costs of appearing. *In re G. C. Knight, Ex parte Smith & Co.,* 1 Morrell, 74—Cave, J.

——Where the trustee rejects a proof tendered by a creditor, and from such rejection an appeal is brought, it is not sufficient to apply to the Court within the twenty-one days limited by Rule 174 of the Bankruptcy Rules, 1883 (see Rule 230, Bankruptcy Rules, 1886), to fix a day and time for the hearing of the appeal, but notice of motion in the usual way must be served on the trustee within the twenty-one days. *In re Gillespie & Co., Ex parte Morrison & Aitcheson,* 1 Morrell, 278; L. R. 14 Q. B. D. 385; 52 L. T. 55; 33 W. R. 751—Cave, J.

——Where on an appeal from the rejection of a proof by the trustee, the objection is taken that such rejection was not made within the fourteen days required by Rule 173 of the Bankruptcy Rules, 1883, the Court will allow such objection, but will treat the application as a motion to expunge the proof on behalf of the trustee, and will deal with the case

accordingly. *In re Voght, Ex parte Spamer*, 3 Morrell, 164—Cave, J.: and see *In re Sissling, Ex parte Fenton*, 2 Morrell, 289; 53 L. T. 967—D.: and compare Rules 227, 228, Bankruptcy Rules, 1886.

——Although by section 89, sub-section (1), of the Bankruptcy Act, 1883, a trustee shall, in the administration of the property of the bankrupt and in the distribution thereof amongst his creditors, have regard to any directions which may be given by the committee of inspection; nevertheless, if such trustee unreasonably and vexatiously rejects a proof of debt, the Court will order him to pay personally the costs occasioned by such rejection, even though in so doing he acted under the directions of the committee. Where the view taken by a committee of inspection upon any question is frivolous and wasteful of the assets, the trustee is not justified in acting upon it, and cannot set up the directions of such committee as a defence against a personal order upon him to pay costs. A trustee ought not to reject a proof tendered in respect of a debt, for which a judgment by consent has been obtained, merely on the ground that a copy not having been filed as required by section 27 of the Debtors Act, 1869, the judgment or any execution issued or taken out thereon is void; but in such case the trustee ought to investigate the validity of the alleged debt. *In re Smith, Ex parte Brown*, 3 Morrell, 202; L. R. 17 Q. B. D. 488—C. A.

——The father of a bankrupt carried in two separate proofs against the estate for 3,000*l.*, which were respectively rejected by the trustee to the extent of 2,000*l.*, and on the application of another creditor were subsequently expunged in the County Court. The creditor appealed, but while the appeals were pending a compromise was entered into, according to the terms of which it was agreed that the claim of the creditor should be reduced to the sum of 1,380*l.*, and that all costs should be paid by the trustee. On application to the County Court Judge for an order for taxation in accordance with the terms of this compromise it was refused.

Held (on appeal): That the proper course was to come to the Court for its consent to the arrangement; and that the refusal of the County Court Judge to grant an order for taxation under the circumstances was right. *In re Green, Ex parte Edmunds*, 2 Morrell, 294; 53 L. T. 967—D.

Appeal from rejection of—Creditor resident Abroad—Security for Costs.]—The Court has no jurisdiction to order a creditor residing abroad, who is appealing from the rejection of his proof by the trustee, to give security for the costs of such appeal. *In re Vanderhaage, Ex parte Izard*, L. R. 20 Q. B. D. 146—Cave, J.

PUBLIC EXAMINATION.

The public examination cannot be concluded until the adjourned first meeting of creditors has been concluded. *In re William Williams*, 1 Morrell, 16—Pepys, R.

——The answers of a bankrupt on his public examination are not admissible in evidence in subsequent motions in the same bankruptcy as against parties other than the bankrupt himself. *In re Brunner, Ex parte The Board of Trade*, 4 Morrell, 255; L. R. 19 Q. B. D. 572; 56 L. J. Q. B. 606; 57 L. T. 418; 35 W. R. 719—Cave, J.

Right of audience of Solicitor at.]—The provisions of section 17, subsection (4) of the Bankruptcy Act, 1883, by which at the public examination of a debtor "any creditor who has tendered a proof, or his representative authorized in writing, may question the debtor concerning his affairs and the causes of his failure," apply to a solicitor representing a creditor who has tendered a proof, and such solicitor, before being permitted to examine a debtor at his public examination, must produce, if so requested, his written authority from such creditor. *The Queen* v. *The Registrar of the Greenwich County Court*, 2 Morrell, 175; L. R. 15 Q. B. D. 54; 54 L. J. Q. B. 392; 33 W. R. 671—C. A.

Costs of.]—The words "any proceeding in Court" in section 105, sub-section 1, of the Bankruptcy Act, 1883, do not include a second meeting of the creditors under a bankruptcy petition, summoned for the purpose of confirming a scheme of arrangement of the debtor's affairs accepted at the first meeting. The Court has in consequence no power to order the costs of the petitioner incidental to such second meeting to be paid out of the debtor's estate. But the words do include the public examination of the debtor, and the Court has power to order costs incidental to such public examination to be paid out of the estate. *In re Strand, Ex parte The Board of Trade*, 1 Morrell, 196; L. R. 13 Q. B. D. 492; 53 L. J. Q. B. 563—D.

Application to rescind Receiving Order before conclusion of.]—After a receiving order had been made against a debtor on his own petition, all the creditors were settled with, but were not paid their debts in full. The debtor thereupon, with the consent of the creditors, but before his public examination was concluded, applied to the Court to have the receiving order rescinded. This application was opposed by the official receiver, on the ground that it should not be made until after the public examination of the debtor had taken place, and the County Court Judge refused the application.

Held (on appeal): That it was in the discretion of the County Court Judge whether he would rescind the receiving order or not; and that, under the circumstances, the discretion was rightly exercised.

That the official receiver had *locus standi* to oppose the application in the County Court, and to appear on the appeal. *In re Leslie, Ex parte Leslie*, 4 Morrell, 75; L. R. 18 Q. B. D. 619; 56 L. T. 569; 35 W. R. 395—D.

"RASH AND HAZARDOUS."—See *Speculation*

RECEIVING ORDER.

The fact that a receiving order in bankruptcy has been made against a plaintiff is no ground for requiring him to give security for costs. *Rhodes* v. *Dawson*, L. R. 16 Q. B. D. 548; 55 L. J. Q. B. 134; 34 W. R. 240—C. A.

——It is the intention of the Legislature that proposals for a composition or scheme of arrangement shall only be entertained after a receiving order has been made. *In re Dixon & Wilson, Ex parte Dixon & Wilson*, 1 Morrell, 98; L. R. 13 Q. B. D. 118; 53 L. J. Ch. 769; 50 L. T. 414; 32 W. R. 837—C. A.

Made in two Courts.]—On February 19th, 1885, a petition was presented against the debtor in the London Bankruptcy Court, but the hearing of such petition was subsequently adjourned from time to time with the consent of the petitioning creditor. On January 5th, 1886, a receiving order was made on this petition in the High Court at 11·30 o'clock, and on the same day at 1 o'clock, a receiving order was also made against the debtor in the Swansea County Court at the instance of another creditor. On an appeal by the creditor presenting the petition in London to set aside such Order of the County Court.

Held: That from the evidence it appeared clear that the legitimate business of the debtor was carried on in Swansea, which was *primâ facie* the place where his business transactions ought to be investigated: and that the petitioning creditor in London having for his own purposes delayed for several months to proceed with his petition, the proper course for the Court to pursue was not to interfere with the order of the County Court, and application to be made to the London Court to stay the proceedings there. *In re Strick, Ex parte Martin*, 3 Morrell, 78—D.

In lieu of Committal.]—See *Committal.*

RE-EXCHANGE.—See *Proof.*

REGISTRAR.

Jurisdiction of.]—See *Jurisdiction.*

Duty of.]—Although the Registrar may in a case of difficulty refer a matter to the Judge in bankruptcy for his decision, yet there is no authority for him without reason to delegate his work to the Judge, and unless a matter is especially reserved to the Judge, or some difficulty arises, the Registrar ought to deal with it. *In re Firbank, Ex parte Knight,* 4 Morrell, 50—Cave, J.

——It is the duty of the Registrar to hear and decide those cases brought before him, and which he is not prevented from so deciding by any order of the Judge, or by the Rules or Statute: and the Registrar, without good cause, and except on the ground of novelty or difficulty, ought not to adjourn any such case for the purpose of its being heard before the Judge in Bankruptcy. *In re Webster, Ex parte Foster & Co.,* 3 Morrell, 132—Cave, J.

——It is the duty of the Registrar to hear and determine an application made *ex parte* for an injunction, even though at the time of such application the Judge in Bankruptcy may be sitting. *In re Brooks,* 3 Morrell, 62—Cave, J.

——An application under section 41, sub-section (1), of the Bankruptcy Act, 1883, for the return of an apprenticeship premium paid to a bankrupt as a fee, ought to be made to the Registrar and not to the Judge in Court. *In re Richardson, Ex parte Gould,* 4 Morrell, 47; 35 W. R. 381—Cave, J.

——An application for an order to hand over books and papers under section 118 of the Bankruptcy Act, 1883, which provides that every British Court having jurisdiction in bankruptcy or insolvency shall be auxiliary to each other, ought to be made to the Registrar, and not to the Judge in Court. *In re Firbank, Ex parte Knight,* 4 Morrell, 50—Cave, J.

On application for Discharge.]—Upon application by a bankrupt for his discharge under section 28 of the Bankruptcy Act, 1883, where any of the offences specified in sub-section (3) of that section are proved to have been committed, the Court must either refuse the order or suspend its operation, or grant an order subject to conditions; and the Court cannot in such case grant an unconditional discharge. *In re Heap, Ex parte The Board of Trade,* 4 Morrell, 314—D.

On refusal to Approve a Scheme.]—The debtors put forward two separate schemes of arrangement, to both of which the Court refused its approval, and the official receiver thereupon applied to the Court forthwith to adjudge the debtors bankrupt; but the Registrar, at the request of the

debtors and some of the creditors, adjourned the hearing of the application for two months.

Held: That the order asked for was one which, if the necessary facts were made out, the Registrar was bound to make, unless good reason was shown for an adjournment of the proceedings: that as a matter of fact, in the present case, delay was asked for in an endeavour to force the creditors and the Court into acquiescence of an improper scheme; and that the debtors must be adjudicated bankrupt forthwith. *In re Reed, Bowen & Co., Ex parte The Chief Official Receiver*, 4 Morrell, 225; L. R. 19 Q. B. D. 174; 56 L. J. Q. B. 447; 56 L. T. 876; 35 W. R. 660—C. A.

As to obeying order of Court of Appeal.]—Where an order is made by a Divisional Court in Bankruptcy on an appeal from a County Court, and the Registrar of the County Court neglects or refuses to carry out such order, the Divisional Court has no original jurisdiction to make an order on the County Court Registrar directing him to do so. But where an order is made by a Divisional Court in Bankruptcy on an appeal from a County Court, the Registrar of the County Court ought to comply with such order forthwith, and has no right to refuse to comply with it until the time limited for appeal to the Court of Appeal has expired. Thus, where the Divisional Court in Bankruptcy on an appeal from a County Court allowed the appeal, and gave leave to the unsuccessful respondent to appeal to the Court of Appeal, but made an order directing moneys in Court to be paid out, which the Registrar of the County Court declined to do until the time limited for appeal to the Court of Appeal had expired, and an order was in consequence made by the Divisional Court directing him to pay out the moneys in question together with costs, from which order the Registrar appealed.

Held: That the Registrar had no right to refuse to pay out the said moneys, there having been no stay of proceedings under the order of the Divisional Court pending appeal.

But the Registrar was an officer of the County Court: the order of the Divisional Court upon the appeal from the County Court was to be carried out by the County Court: and the Divisional Court had no jurisdiction to make such an order against the Registrar. *In re Wise, Ex parte Rowlands*, 3 Morrell, 174; L. R. 17 Q. B. D. 389; 55 L. J. Q. B. 362; 54 L. T. 722; 34 W. R. 711—C. A.

Discretion of.]—The Registrar, before rescinding the appointment of a receiver, or granting a stay of proceedings, is not bound to be satisfied that the consent of all the creditors has been obtained; but he must exercise his discretion as to the sufficiency of the consent obtained in each case. Pending such rescission or stay of proceedings, the debtor

should not, even with the consent of the petitioning creditors, be left in unfettered control of the estate; but a stay of the advertisement by the receiver may properly be granted. *In re Carr, Ex parte Carr*, 35 W. R. 150—C. A.

——Where a bankruptcy petition is presented by a creditor founded on an act of bankruptcy committed by the failure of the debtor to comply with the terms of a bankruptcy notice to pay a judgment debt, and an appeal is pending from such judgment, it is a matter of discretion for the Registrar whether he will make a receiving order, or stay the proceedings, and the Court of Appeal will not interfere unless such exercise of discretion is clearly wrong. *In re Rhodes, Ex parte Heyworth*, 1 Morrell, 269; L. R. 14 Q. B. D. 49; 54 L. J. Q. B. 198; 52 L. T. 201—C. A.

And see also as to *Discretion of Registrar*, the cases under titles *Discharge—Composition—Scheme of Arrangement*.

REHEARING.

An application to rehear a case cannot be founded upon the same evidence which was presented to the Court on the occasion of the former hearing, but if different materials are discovered which ought to have been then placed before the Court, such application may be made, and the Court will, if it sees fit, allow the case to be reheard. *In re Aysh-ford, Ex parte Lovering*, 4 Morrell, 164; 35 W. R. 652—Cave, J.

REPUTED OWNERSHIP.

Hotel-keeper—Hiring of Furniture.]—The custom for hotel-keepers to hire the furniture of their hotels is so notorious, and has been so often proved, that it need not now be proved, but the Court will take judicial notice of it. And the custom extends not only to furniture in the strictest sense of the word, but to all the articles which are necessary for the furnishing of an hotel for the purpose of using it as an hotel. The effect of the custom is absolutely to exclude the reputation of ownership by the hotel-keeper of all those articles in the hotel, at the time of his bankruptcy, which are within the scope of the custom, without regard to the question whether the particular articles are or are not in fact hired by him. Consequently, articles which are his property, subject to a mortgage by bill of sale, will be excluded from the operation of the reputed ownership clause. *In re Parker & Parker, Ex parte Turquand*, L. R. 14 Q. B. D. 636; 54 L. J. Q. B. 242; 53 L. T. 579; 33 W. R. 437—C. A.

Artist's Pictures.]—Where a picture was lent by the owner of it to the

artist who had painted it, for the purpose of being exhibited by him in a public gallery amongst other pictures painted by him and exhibited there for sale, such picture did not pass to the trustee in bankruptcy on the artist becoming bankrupt, as being in his order and disposition within the meaning of section 44, sub-section (iii), of the Bankruptcy Act, 1883. *In re Cook, Ex parte Dudgeon*, 1 Morrell, 108—Mathew, J.

Custom in Hop-Trade.]—A custom exists in the hop-trade for hop-merchants to retain in their warehouse hops purchased by their customers, so as to prevent the operation of the order and disposition clause —section 44, sub-section (iii),—of the Bankruptcy Act, 1883. At the time of the presentation of a bankruptcy petition by the debtor, who carried on business as a hop and seed merchant, there were lying in his warehouse certain pockets of hops which he had sold to the applicant. The hops were left there for the convenience of the purchaser, and had been duly paid for. It was proved to be the custom of the hop-trade for hops sold to remain in the warehouse of the merchant to the order of the purchaser, and that no person familiar with the hop-trade would suppose that all hops lying in a hop merchant's warehouse were the property of such merchant.

Held: That the existence of a custom of this nature, shown to be well known amongst persons concerned in the hop-trade, excluded the doctrine of reputed ownership, and that the hops did not pass to the trustee. *In re Taylor, Ex parte Dyer*, 2 Morrell, 268; 53 L. T. 768; 34 W. R. 108.—Cave, J.

Agistment.]—Where a cattle-dealer placed certain stock on the lands of a farmer upon an agreement whereby such stock remained the property of the dealer, who at the end of the fixed period was to sell the stock, and, after deducting the original price, together with a percentage for profit, was to hand over the balance to the farmer: and during the continuance of the agreement the farmer became bankrupt, whereupon the trustee in the bankruptcy claimed the stock in question as being in the reputed ownership of the bankrupt within section 44, sub-section (iii), of the Bankruptcy Act, 1883.

Held: That the custom of agistment was notorious, and one which the ordinary creditors of the bankrupt might reasonably be presumed to have known: and that such being the case no reputation of ownership could arise with respect to the stock upon the lands of a farmer. *In re Woodward, Ex parte Huggins*, 3 Morrell, 75; 54 L. T. 683—D.

Shares in Railway Company—Chose in Action.]—Shares in a railway company are "things in action" within the meaning of section 44, sub-

section (iii), of the Bankruptcy Act, 1883, so as to be excepted from the doctrine of reputed ownership. Where a partner in a stockbroking firm purchased shares in a railway company with money of the firm, and subsequently deposited the share certificates with the firm's bankers as security or cover for advances made by them to the firm, and before notice of the deposit had been given to the railway company, the firm, and also the members of it, were adjudicated bankrupts.

Held: That the trustee in the bankruptcy was not entitled to such shares as being in the reputed ownership of the bankrupts within section 44, sub-section (iii) of the Bankruptcy Act.

Quære: Whether the term "choses in action" does not now include all personal chattels not in possession. *Colonial Bank* v. *Whinney*, 3 Morrell, 207; L. R. 11 App. Cas. 426; 56 L. J. Ch. 43; 55 L. T. 362; 34 W. R. 705—H. L.

Upholsterer—Patterns.]—There is a custom in the upholstering trade for an upholsterer to have in his possession patterns belonging to the wholesale manufacturer, and, consequently, such patterns are not in the reputed ownership of the trader so as to pass to the trustee on bankruptcy. *In re Lay, Ex parte Woodward*, 54 L. T. 683—D.

Furniture Trade—Goods sent "on Sale or Return."]—Upon the evidence given there is no custom in the furniture trade to deliver goods to dealers upon "sale or return" so as to prevent the operation of the reputed ownership clause—section 44, sub-section (iii)—of the Bankruptcy Act, 1883. The applicants deposited with the debtor certain Oriental antiquities and curiosities, carpets, rugs, and other articles upon the terms of "sale or return," which goods were in the possession of the debtor at the time of the bankruptcy, and were retained by the trustee.

Held: That when a custom is sought to be established, it lies upon the persons who affirm the existence of the custom to make it out; and that although a practice is undoubtedly creeping into the furniture trade of sending goods on sale or return, the evidence given was not sufficient to justify the Court in saying that the custom is an established one, and so common and notorious that a person making enquiry of those cognizant of the trade would be told there was no doubt of such custom. *In re Horn, Ex parte Nassan*, 3 Morrell, 51—Cave, J.

Hiring of vans in Grocery Trade].—Upon appeal from decision of the County Court Judge that no custom exists for a grocer and provision merchant to hire vans used in the business, so as to prevent the operation

of the reputed ownership clause—section 44, sub-section (iii)—of the Bankruptcy Act, 1883.

Held: That upon the evidence on affidavit before him it was open to the County Court Judge to come to the conclusion to which he did, and that being so his decision would not be set aside.

That where the fact of a custom existing in a particular trade has to be decided, the case is one proper to be tried with the assistance of a jury and with witnesses, and not upon affidavit evidence alone. *In re Jensen, Ex parte Callow*, 4 Morrell, 1—D.

"*Trade or Business*"—*Sale of surplus Produce of Farm.*]—In a case where a bankrupt took a house with 79 acres of land, at a rent of 400*l.* a year, and subsequently rented other land to the extent of 100 acres (part of which he sublet), and farmed the land so taken for pleasure, and out of the returns supplied his house, and sold the surplus farm and garden produce, and also bred horses.

Held: That the house and land were taken for pleasure and enjoyment, and not for the purpose of business; that this intention was never changed into such a purpose as that of holding them for business only; and that the bankrupt had not carried on business as a farmer or market gardener so as to entitle the trustee in the bankruptcy to claim certain goods against a bill of sale holder, as being in the order and disposition of the bankrupt in his trade or business under section 44, sub-section (iii) of the Bankruptcy Act, 1883. *In re Wallis, Ex parte The Trustee*, 2 Morrell, 79; L. R. 14 Q. B. D. 950; 52 L. T. 625; 33 W. R. 733—Cave, J.

"*Trade or Business*"—*Shares in Company.*]—In a case where the bankrupt who carried on business as a stockbroker, silversmith, and watchmaker, deposited in the year 1878 the certificates of thirty shares in a wagon company with a bank in order to secure his overdrawn account, but such shares continued to be registered in the name of the bankrupt, and in 1884 a receiving order was made against the bankrupt, whereupon the trustee appointed in the bankruptcy laid claim to the said thirty shares, and the County Court Judge decided that the said shares were in the order and disposition of the bankrupt in his trade or business at the time of the bankruptcy, and directed the bank to hand them over to such trustee.

Held: That the shares in question were not in the bankrupt's possession in his trade or business; that they had in fact been registered in the name of the bankrupt for six years, and were held by him simply as an investment and not for the purpose of selling to his customers; and that the order of the County Court Judge directing the bank to hand

over such shares to the trustee in the bankruptcy must be reversed. *In re Jenkinson, Ex parte Nottingham Bank*, 2 Morrell, 131; L. R. 15 Q. B. D. 441; 54 L. J. Q. B. 601—D.

REQUEST.

Order of, to Irish Court.]—An application was granted by the Court for an order of request to the Court at Dublin to enforce an order of the High Court with respect to the payment of certain costs by a creditor who had failed in an appeal from the rejection of his proof by the trustee in bankruptcy. *In re Bell*, 2 Morrell, 291—D.

From Foreign Court in Aid.]—An application for an order to hand over books and papers under section 118 of the Bankruptcy Act, 1883, which provides that every British Court having jurisdiction in bankruptcy or insolvency shall be auxiliary to each other, ought to be made to the Registrar, and not to the Judge in Court. Although the Registrar may in a case of difficulty refer a matter to the Judge in Bankruptcy for his decision, yet there is no authority for him without reason to delegate his work to the Judge; and unless a matter is especially reserved to the Judge, or some difficulty arises, the Registrar ought to deal with it. *In re Firbank, Ex parte Knight*, 4 Morrell, 50—Cave, J.

REVIEW.

Where, on the refusal of an application by the Registrar, application was subsequently made to the Judge sitting in bankruptcy to review the decision.

Held: That there was no power to accede to the request, and that in the event of the Registrar declining to review his own decision, the proper course was by way of appeal to the Court of Appeal. *In re Moore*, 2 Morrell, 78—Cave, J.

——An application by the Board of Trade for a review of taxation of the costs of a solicitor under Rule 104 of the Bankruptcy Rules, 1883, can only be made for the benefit of the estate, and where there is no estate and no trustee such rule will not apply. *In re Rodway, Ex parte Phillips*, 1 Morrell, 228—Wills, J. And see Rule 124 of the Bankruptcy Rules, 1886; and compare Rule 209, Bankruptcy Rules, 1886.

SALARY.

Where a bankrupt was a commercial traveller at an annual salary of 100*l.*, paid weekly, the engagement being terminable at a week's notice.

Held: That such bankrupt was in the receipt of a salary, within the

meaning of section 53, sub-section (2) of the Bankruptcy Act, 1883, out of which the Court had power to direct payment of a certain sum by monthly instalments to the trustee in bankruptcy, for the purpose of distribution amongst the creditors. *In re Brindley, Ex parte Brindley*, 4 Morrell, 104; 56 L. T. 498; 35 W. R. 596—D.

SALE.

By Official Receiver.]—Before the appointment of a trustee by the creditors, the official receiver who is, by section 54 of the Bankruptcy Act, 1883, the trustee for the purposes of that Act until a trustee is appointed, has power, after an adjudication in bankruptcy has been made against a debtor, to exercise the powers given by section 56 of the Act to the trustee. Such official receiver, therefore, may sell the property of the bankrupt. *In re Parker & Parker, Ex parte The Board of Trade*, 2 Morrell, 158; L. R. 15 Q. B. D. 196; 54 L. J. Q. B. 372; 52 L. T. 670—C. A. Affirmed L. R. 11 App. Cas. 286; 55 L. J. Q. B. 417; 55 L. T. 30—H. L.

Of Mortgaged Property.]—The provisions of Rules 78 to 81 of the Bankruptcy Rules, 1870 (compare Nos. 65 to 69 of the Bankruptcy Rules, 1883), were not intended to fetter the Court in cases where an application has been made to the Court by a mortgagee of property of the bankrupt for a sale of such property, as provided by the rules, so as (1) to compel the Court to give the conduct of such sale to the trustee in the bankruptcy: or (2) to compel the Court to give the trustee a first charge on the proceeds of the sale for his costs and expenses in cases where the conduct of the sale has been taken away from him. *In re Jordan, Ex parte Lloyd's Banking Co.*, 1 Morrell, 41; L. R. 13 Q. B. D. 228; 53 L. J. Q. B. 554; 50 L. T. 594; 33 W. R. 153—Cave, J. And compare Rules 73 to 77 of the Bankruptcy Rules, 1886.

Of Goods to Debtor.]—Where goods had been sold to a debtor, and there was no evidence to show that such goods were sold as to sample, the mere fact that a letter is subsequently written by the vendee to the vendor stating that he could not accept the goods, but would hold them for the vendor and try to sell them for him (and to which letter no answer is returned by the vendor) will not constitute the vendee a trustee for the vendor under section 44, sub-section 1, of the Bankruptcy Act, 1883, so as to prevent the trustee in the bankruptcy claiming such goods as part of the estate in the event of the vendee subsequently becoming a bankrupt. *In re Landrock, Ex parte Fabian*, 1 Morrell, 62—Cave, J

SCHEME OF ARRANGEMENT.

It is the intention of the Legislature that proposals for a composition or scheme of arrangement shall only be entertained after a receiving order has been made. *In re Dixon & Wilson, Ex parte Dixon & Wilson*, 1 Morrell, 98; L. R. 13 Q. B. D. 118; 53 L. J. Ch. 769; 50 L. T. 414; 32 W. R. 837—C. A.

——The fact that, before the presentation of a bankruptcy petition against the debtor, a large number of the creditors have assented to a deed of arrangement, is not a "sufficient cause" within the meaning of section 7, sub-section (3), of the Bankruptcy Act, 1883, for dismissing such petition presented by a dissenting creditor, however beneficial to the creditors the terms of such arrangement may be; and, in consequence, there is no jurisdiction to adjourn generally the hearing of such petition with a view to its ultimate dismissal if the arrangement should be found to work well. The case of *In re Dixon & Wilson, Ex parte Dixon & Wilson* (see 1 Morrell, 98), approved and explained to the effect that the decision there did not depend upon the particular terms of the arrangement, but upon the fact that such arrangement was made at the time, and in the manner, and by the persons by whom it was made. *In re Watson & Smith, Ex parte Oram*, 2 Morrell, 199; L. R. 15 Q. B. D. 399; 52 L. T. 785; 33 W. R. 890—C. A.

Powers of Trustee under—Discovery.]—The term "trustee" in section 27 of the Bankruptcy Act, 1883, which provides that the Court may, on the application of the official receiver or trustee, at any time after a receiving order has been made against a debtor, summon before it persons for the purpose of discovery of the debtor's property, does not include a trustee under a scheme of arrangement of a debtor's affairs accepted by the creditors and approved by the Court under section 18 of the Act. *In re Grant, Ex parte Whinney*, 3 Morrell, 118; L. R. 17 Q. B. D. 238; 55 L. J. Q. B. 369; 54 L. T. 632; 34 W. R. 539—C. A.

Attempt to incorporate Section 27 as to Discovery—Reasonableness—Approval of Court.]—The powers given by section 27 of the Bankruptcy Act, 1883, in respect of discovery of a debtor's property, cannot be incorporated into a scheme of arrangement accepted by a majority of the creditors under section 18 of the Act. A scheme of arrangement must be both reasonable and calculated to benefit the general body of creditors; and where a proposed scheme gave to the creditors no advantage which they would not have if bankruptcy proceedings were allowed to go on, but by reason of the inability to apply the provisions of section 27 as to

discovery, such scheme gave to the creditors even less advantage than a bankruptcy.

Held: That the scheme in question was not reasonable, and was not calculated to benefit the general body of creditors; and that the approval of the Court ought not to be granted. *In re Aylmer, Ex parte Bischoffsheim*, 4 Morrell, 152; L. R. 19 Q. B. D. 33; 56 L. J. Q. B. 460; 56 L. T. 801; 35 W. R. 532—C. A.

Approval of Court—Reasonableness.]—In a case where a scheme of arrangement of the debtor's affairs, duly agreed to and confirmed by the creditors in accordance with the provisions of section 18 of the Bankruptcy Act, 1883, contained a clause to the effect that "the debtors shall be discharged when the committee of inspection so resolve."

Held: That such provision dealing with the discharge of the debtors was unreasonable, and not in accordance with the intention and scope of the Act; and that a scheme containing such a provision ought not to be approved by the Court, even though the debtors themselves asked that such approval should be given. *In re Clarke, Ex parte Clarke*, 1 Morrell, 143; L. R. 13 Q. B. D. 426; 53 L. J. Ch. 1062; 51 L. T. 584; 32 W. R. 775—C. A.

Approval of Court—Wishes of Creditors—Proper Books—Business left under Control of Debtors—Duty of Official Receiver.]—The action of the Legislature by section 18 of the Bankruptcy Act, 1883, in taking away from the majority of creditors the power which they formerly possessed, and in putting into the hands of the Court the controlling power in the case of a composition or scheme of arrangement, was for the purpose of protecting such creditors themselves against their own recklessness: for preventing a majority of creditors from dealing recklessly not only with their own property but with that of the minority of creditors; and for the purpose of enforcing, so far as the Legislature could, a more careful and moral conduct on the part of persons who eventually become insolvent debtors. In deciding as to the granting or refusing the approval of the Court to a composition or scheme of arrangement, the question whether the debtor has kept proper books is one of primary importance: and the neglect of a trader to have books properly kept and balanced from time to time, so that the real state of his affairs may at once appear, is a serious offence. Where, by the provisions of the proposed scheme, the control of the business is left in the hands of the debtors who have been proved to have previously carried on their business in a reckless and improper manner, the Court ought to refuse its approval to such scheme, on the ground that it would not trust with the control of the business persons who had shown themselves unworthy to

be trusted to carry on any business with reasonable care and attention. When the official receiver has made his report upon a composition or scheme of arrangement his duty is complete, and, except under very particular circumstances, he should not appear on an appeal; if the appearance of the official receiver is essential, the Court will allow the appeal to stand over for that purpose; and unless his appearance is requisite no costs will be allowed to him. *In re Reed, Bowen & Co., Ex parte Reed, Bowen & Co.*, 3 Morrell, 90; L. R. 17 Q. B. D. 244; 55 L. J. Q. B. 244; 34 W. R. 493—C. A.

Approval of Court—Wishes of Creditors—Proper Books—Discretion of Registrar—Report of Official Receiver.]—On a contention raised that although for the purposes of the discharge of a bankrupt under section 28 of the Bankruptcy Act, 1883, the report of the official receiver is *primâ facie* evidence of the truth of the statements therein contained, nevertheless for the purposes of the approval of a composition or scheme under section 18, sub-section (6) of the Act, such report is not made *primâ facie* evidence, and that the Registrar ought not to refuse to approve a composition without having the facts mentioned in section 28, sub-section (3), proved by other evidence.

Held: That the report of the official receiver is *primâ facie* evidence for the purposes of section 18, sub-section (6), and that the proof of the facts referred to in section 28, sub-section (3), which is sufficient in the case of the discharge of a bankrupt under that section, would also be sufficient proof in the case of the approval of the composition or scheme under section 18, sub-section (6).

That in deciding as to the granting or refusing the discharge of a bankrupt or the approval of a composition or scheme of arrangement, the question whether the debtor has kept proper books is one of primary importance.

That it is no ground to set aside the decision of the Registrar refusing to approve a composition because a large majority of the creditors of a debtor are desirous of accepting it, but that the object of the Bankruptcy Act, 1883, being to prevent reckless debtors from escaping the consequences of their conduct by the payment of a nominal dividend, it is the duty of the Court to protect such creditors from themselves. *In re Wallace, Ex parte Campbell*, 2 Morrell, 167; L. R. 15 Q. B. D. 213; 54 L. J. Q. B. 382; 53 L. T. 208—C. A.

Duty of Registrar as to Approving—Discretion.]—On the question of granting or refusing the approval of the Court to a composition or scheme of arrangement, the Registrar must not take a one-sided view, but look

at all the circumstances. He must consider on the one side the conduct of the debtor, and on the other the interests of the creditors, and he must exercise his discretion both with regard to his duty to the public on the one hand, and his duty to the creditors on the other. The Registrar must consider all the circumstances, and exercise his discretion thereon. *In re Barlow, Ex parte Thornber*, 3 Morrell, 304—C. A.

——Where application is made to the Court for approval of a composition or scheme, the Registrar must exercise a judicial discretion on the whole case, and the Court of Appeal will not disapprove of his decision, except on the clearest ground. The Registrar ought to look both at the interests of the creditors, and the conduct of the debtor; and so far as the effect of the approval of the composition or scheme will be to release the debtor from liability, his conduct ought to be carefully examined; but regard must also be had for the interests of the creditors, and if the composition or scheme is clearly the best thing for the creditors, the Registrar ought to have due regard for that fact. The Registrar must look closely into all the circumstances, and exercise his discretion thereon. *In re Genese, Ex parte Kearsley & Co.*, 3 Morrell, 274; L. R. 18 Q. B. D. 168; 56 L. J. Q. B. 220; 56 L. T. 79—C. A.

——On an appeal by the petitioning creditor from an order of the Court approving a scheme of arrangement put forward by the debtor, on the ground that by reason of the conduct of such debtor the Court, if he were adjudged bankrupt, would be required to refuse his discharge; or that, at any rate, such facts had been proved against him as would justify the Court in the case of bankruptcy in refusing, qualifying, or suspending the discharge.

Held: That there was no evidence of any offence committed by the debtor which would under the Act require the Court to refuse the discharge.

That the words of section 18, sub-section (6), of the Bankruptcy Act, 1883—"If any such facts are proved as would under this Act justify the Court in refusing, qualifying, or suspending the debtor's discharge, the Court may, in its discretion, refuse to approve the composition or scheme"—show that in such case it is in the discretion of the Court whether it will refuse to approve a scheme or not; that all matters must be duly weighed by the Court, and discretion exercised; and that the decision of the Court will not be set aside on appeal unless it is manifestly wrong. *In re Postlethwaite, Ex parte Ledger*, 3 Morrell, 169—C. A.

——The debtors put forward two separate schemes of arrangement, to both of which the Court refused its approval, and the official receiver

thereupon applied to the Court forthwith to adjudge the debtors bankrupt; but the Registrar at the request of the debtors, and some of the creditors, adjourned the hearing of the application for two months.

Held: That the order asked for was one which, if the necessary facts were made out, the Registrar was bound to make, unless good reason was shown for an adjournment of the proceedings; that as a matter of fact in the present case delay was asked for in an endeavour to force the creditors and the Court into acquiescence of an improper scheme; and that the debtors must be adjudicated bankrupt forthwith. *In re Reed, Bowen & Co., Ex parte The Chief Official Receiver,* 4 Morrell, 225; L. R. 19 Q. B. D. 174; 56 L. J. Q. B. 447; 56 L. T. 876; 35 W. R. 660—C. A.

Failure of Scheme—Injustice to Creditors—Adjudication.]—A debtor having filed a bankruptcy petition against himself, the creditors accepted a scheme of arrangement for the payment of a composition of 20*s.* in the pound, as a security for which the debtor assigned to a trustee for the creditors all his property, except certain property included in a post-nuptial settlement made by himself under which he had a life interest. The value of the property so assigned proved to be much less than the debtor's estimate of it, and was insufficient to pay the creditors 20*s.* in the pound, and they thereupon applied for an adjudication of bankruptcy against the debtor, with the view of testing the validity of the settlement made by him, and of obtaining possession of the debtor's life interest.

Held: That although it could not be said that the debtor had been guilty of fraud, yet he had misled the creditors by over-estimating the value of his assets; that it would be unjust to the creditors that they should not get 20*s.* in the pound; and that the Court had jurisdiction under section 18, sub-section (11), of the Bankruptcy Act, 1883, to make an order of adjudication under the circumstances.

That although the Court would not make an order of adjudication, if no benefit could possibly result from it to the creditors, yet as it was possible that they might get something more by means of the adjudication in the present case, the order ought to be made. *In re Moon, Ex parte Moon,* 4 Morrell, 263; L. R. 19 Q. B. D. 669; 56 L. J. Q. B. 496; 35 W. R. 743—C. A.

Resolution to accept Scheme after Adjudication — Confirmation at Second Meeting.]—Where the creditors of a bankrupt after adjudication, by special resolution resolve, under section 23 of the Bankruptcy Act, 1883, to entertain a proposal for a composition or scheme of arrangement of the bankrupt's affairs, such special resolution must be confirmed

at a second meeting of the creditors in the same manner as a special resolution under section 18 of the Act, resolving before adjudication to entertain a like proposal. *In re Genese, Ex parte Kearsley & Co.*, 3 Morrell, 274; L. R. 18 Q. B. D. 168; 56 L. J. Q. B. 220; 56 L. T. 79—C. A.

Court Fees on.]—The proposal put forward by a debtor provided, that all the property of such debtor divisible among his creditors should vest in a trustee, and, subject to the provisions of the scheme, be administered according to the law of bankruptcy; that, in addition, the sum of 100*l.* a year, out of a pension of 297*l.*, belonging to the debtor, should be paid to the trustee under the scheme until, with the rest of the debtor's property, all the costs relating to the bankruptcy should have been paid, and the creditors should have received 15*s.* in the pound upon the amount of their debts; that after payment of 15*s.* in the pound to the creditors upon their debts, and of all the costs, charges, and expenses, the trustee should hand over to the debtor the surplus of the estate; and that as from the date of the confirmation of the scheme by the Court the debtor should be released and discharged from all the debts provable under the bankruptcy. On the debtor applying to the Court for its approval, the Registrar was in doubt whether such proposal required to be stamped as a composition, or a scheme of arrangement, and the question was referred to the Judge for decision.

Held: That the arrangement in question had more of the elements of a scheme than of a composition; and that the fee must be paid on the estimated value of the 100*l.* a year as an asset. *In re Griffith*, 3 Morrell, 111—Cave, J.

Application by Trustee for Directions—Right of Debtor to be heard.] —Where a trustee in a liquidation applied to the County Court for directions as to the acceptance of an offer for the purchase of the debtor's property, and notice was given to the debtors, but at the hearing of the application the County Court Judge refused to hear the solicitor for the debtors or to receive evidence on their behalf.

Held: That notice having been given to the debtors they ought to have been heard; and that an appeal lay from such refusal of the County Court Judge to do so.

Quære: Whether when a trustee applies to the Court for directions in any particular matter the debtor is in any event entitled to appear and be heard. *In re Webb & Sons, Ex parte Webb & Sons*, 4 Morrell, 52—Cave, J.

SECURED CREDITOR.—See *Creditor.*

SET-OFF.

As a general rule, and in the absence of special circumstances where there are mutual dealings between a debtor and his creditors, the line as to set-off must be drawn at the date of the commencement of the bankruptcy. *In re Gillespie, Ex parte Reid & Son*, 2 Morrell, 100; L. R. 14 Q. B. D. 963; 54 L. J. Q. B. 342; 52 L. T. 692; 33 W. R. 707—Cave, J.

Right of.]—The trustees of a will, who were also residuary legatees, made use of the trust estate for their own purposes, and a summons was subsequently taken out in the Chancery Division to get in the estate under which a receiver was appointed. On the day of the hearing of the summons one of the trustees filed his own petition in bankruptcy. An account having been taken of the sum due in respect of the estate which had come into the hands of the trustees, the receiver sought to prove for such sum against the estate of the bankrupt.

Held: That the bankrupt had at the date of the receiving order a right of set-off to the amount of his own share as legatee, and that the proof in question must be reduced by such amount. *In re Chapman, Ex parte Parker*, 4 Morrell, 109; 35 W. R. 595—D.

SETTLEMENT.

Voluntary.]—A settlement which leaves the settlor still able to pay his debts, although his means of paying them may be in part derived from the interest he takes under the settlement, is not within the meaning of section 47 of the Bankruptcy Act, 1883, which provides that a voluntary settlement shall, if the settlor becomes bankrupt within ten years of its execution, be void against the trustee in the bankruptcy unless the parties claiming under it can prove that the settlor was, at the time of making the settlement, able to pay all his debts without the aid of the property comprised in the settlement, and that the interest of the settlor in such property had passed to the trustee of such settlement on the execution thereof. Section 47 must be read to mean "without the aid of the property which by the settlement passes to other persons." *In re Lowndes, Ex parte the Official Receiver*, 4 Morrell, 139; L. R. 18 Q. B. D. 677; 56 L. J. Q. B. 425; 56 L. T. 575; 35 W. R. 549—D.

——Only those parts of section 47 of the Bankruptcy Act, 1883, which are identical with section 91 of the Bankruptcy Act, 1869, have a retrospective effect; and therefore section 47 does not so apply to the case of non-traders, or as regards the requirement of proof by parties claiming under the settlement that the interest of the settlor passed to

the trustees of such settlement on the execution thereof. In 1877 the bankrupt executed a deed, whereby, after reciting his title to certain shares, it was agreed that the trustees therein mentioned should stand possessed of the said shares as soon as the same should be transferred to them upon trust for the settlor's wife during her life, and after her death on further trusts for the benefit of the settlor and his children. The deed contained no covenant or obligation binding the settlor to carry out its provisions, and no actual transfer of the shares to the trustees was executed until February, 1886. In April, 1886, the settlor was adjudicated bankrupt.

Held: That the instrument executed in 1877, inasmuch as it imposed no obligation on the settlor in respect of the shares, was not a settlement; but that the transfer executed in 1886, was a settlement within the meaning of section 47, sub-section (3), of the Bankruptcy Act, 1883, which includes in the said term any conveyance or transfer of property; and that such settlement was therefore void against the trustee in the bankruptcy under sub-section (1) of section 47, in that the settlor became bankrupt within two years after the date thereof. *In re Ashcroft, Ex parte Todd*, 4 Morrell, 209; L. R. 19 Q. B. D. 186; 55 L. J. Q. B. 431; 35 W. R. 676—C. A.

Where, in the year 1880, the bankrupt gave to his son a sum of money for the purchase of shares in a ship, which were so purchased by the son.

Held: That the transaction was a voluntary settlement within section 47 of the Bankruptcy Act, 1883, and void as against the trustee. *In re Player, Ex parte Harvey*, 2 Morrell, 261; 54 L. J. Q. B. 553—D.

——Where in the year 1882, more than two years before the bankruptcy, a bankrupt had advanced to his son the sum of 650*l.*, to enable the son to set up and carry on business, and the son himself brought in 150*l.* and carried on the business.

Held: That the transaction was not a voluntary settlement within section 47 of the Bankruptcy Act, 1883. *In re Player, Ex parte Harvey*, 2 Morrell, 265; L. R. 15 Q. B. D. 682; 54 L. J. Q. B. 554—D.

——Section 47 of the Bankruptcy Act, 1883, which deals with the avoidance of voluntary settlements, does not apply where the estate of a person dying insolvent is being administered in bankruptcy under section 125 of the Act. *In re Gould, Ex parte Chief Official Receiver*, 4 Morrell, 202; L. R. 19 Q. B. D. 92; 56 L. J. Q. B. 333; 35 W. R. 569—C. A.

Marriage.]—Where by a marriage settlement the settlor covenanted that he, during his life, or his representatives within twelve months after

his death, would pay the sum of 5,000*l.* to the trustees to be held by them on the trusts of the settlement, and the settlor subsequently became bankrupt.

Held, following the decision of the Court of Appeal in the case of *Ex parte Bishop, In re Tonnies* (L. R. 8 Ch. App. 718): That a covenant for payment of a sum of money not specifically earmarked was not within section 47, sub-section (2), of the Bankruptcy Act, 1883, as a covenant for the future settlement of money or property in which the settlor had no interest at the date of his marriage, and that the trustees were entitled to prove against the estate. *In re Knight, Ex parte Cooper*, 2 Morrell, 223—D.

SHARES.

In Railway Company—Chose in Action.]—Shares in a railway company are "things in action" within the meaning of section 44, sub-section (iii.), of the Bankruptcy Act, 1883, so as to be excepted from the doctrine of reputed ownership. *Colonial Bank* v. *Whinney*, 3 Morrell, 107; L. R. 11 App. Cas. 426; 56 L. J. Ch. 43; 55 L. T. 362; 34 W. R. 705—H. L.

——Where in the year 1880, the bankrupt handed to his son a sum of money to be invested in shares in a ship which were registered in the name of the son at the time of and sold by him subsequently to the bankruptcy.

Held: That the transaction was a voluntary settlement within section 47 of the Bankruptcy Act, 1883, and void as against the trustee. *In re Player, Ex parte Harvey*, 2 Morrell, 261; 54 L. J. Q. B. 553—D.

Charging Order on.]—A charging order upon shares, made under Statute 1 & 2 Vict. c. 110, s. 14, does not fall within section 45 of the Bankruptcy Act, 1883, and the words in the said section, "an execution against the goods of a debtor," which is to be completed by seizure and sale, do not include such an order. *In re Hutchinson, Ex parte Plowden & Co.*, 3 Morrell, 19; L. R. 16 Q. B. D. 515; 55 L. J. Q. B. 582; 54 L. T. 302; 34 W. R. 475—D.

SHERIFF.

See *Execution—Elegit—Arrest—Attachment—Bankruptcy Notice.*

SHORTHAND WRITER.

Costs of.]—As a general rule the application to allow the costs of shorthand writers' notes of evidence as the costs of a successful appellant should be made at the hearing, but the mere omission to make the appli-

cation then does not prevent its being made subsequently. *Semble*, if the application is made on a subsequent day and is successful, the Court ought to make the applicant pay the costs of the application, as they were caused by his own omission. Where the shorthand writer is appointed at the instance of one party he cannot recover the costs of the notes unless under special circumstances. Where the appointment is made by both parties, the costs should be paid by the unsuccessful party. *In re Day, Ex parte Steed*, 1 Morrell, 251; 33 W. R. 80—Cave, J.

——It is the invariable practice of the Bankruptcy Court to refuse the costs of shorthand writers' notes unless the application is made at the commencement of the case. *In re Gillespie, Ex parte Reid*, 33 W. R. 707—Cave, J. And see now the "Regulations" dated March 25th, 1885, Rule 9.

SOLICITOR.

Right of audience of.]—Under the Bankruptcy Act, 1883, and the Bankruptcy Appeals (County Courts) Act, 1884, a solicitor has the same right of audience in the Divisional Court sitting as a Court of Appeal from orders of the County Courts in Bankruptcy matters as that formerly possessed under the Bankruptcy Act, 1869, in the case of an appeal from the County Court to the Chief Judge in Bankruptcy. *In re Barnett, Ex parte Reynolds*, 2 Morrell, 122; L. R. 15 Q. B. D. 169; 54 L. J. Q. B. 354; 53 L. T. 448—D.

——The right of audience given to a solicitor in bankruptcy matters by section 151 of the Bankruptcy Act, 1883, is limited to the High Court, and does not extend to the Court of Appeal. *In re Elderton, Ex parte Russell*, 4 Morrell, 36—C. A.

Right at Public Examination.]—The provisions of section 17, subsection (4), of the Bankruptcy Act, 1883, by which at the public examination of a debtor "any creditor who has tendered a proof, or his representative authorized in writing, may question the debtor concerning his affairs and the causes of his failure," apply to a solicitor representing a creditor who has tendered a proof, and such solicitor, before being permitted to examine a debtor at his public examination, must produce, if so requested, his written authority from such creditor. *The Queen* v. *The Registrar of the Greenwich County Court*, 2 Morrell, 175; L. R. 15 Q. B. D. 54; 54 L. J. Q. B. 392; 33 W. R. 671—C. A.

Costs of.]—Where, after the presentation of a bankruptcy petition, proceedings are carried on by a debtor, from which the official receiver comes to a clear conclusion that substantial advantage has accrued to

the debtor's estate, such ought to be looked upon in the light of salvage and the costs attendant upon the proceedings in question should be allowed out of the estate. *In re F. H. Johnstone, Ex parte Angier,* 1 Morrell, 213; 32 W. R. 1001—Cave, J.

——An application by the Board of Trade for a review of taxation of the costs of a solicitor under Rule 104 of the Bankruptcy Rules, 1883, can only be made for the benefit of the estate, and where there is no estate and no trustee such rule will not apply. *In re Rodway, Ex parte Phillips,* 1 Morrell, 228—Wills, J. And see Rule 124 of the Bankruptcy Rules, 1886; and compare Rule 209, Bankruptcy Rules, 1886.

——Where an agreement entered into by a solicitor to conduct certain bankruptcy proceedings on the terms that his costs should not exceed 10*l.* had been declared void by the County Court Judge on the application of such solicitor, and an appeal from this decision having been brought to the Divisional Court in Bankruptcy, the preliminary objection was taken that the Court, sitting as a Court of Appeal in bankruptcy matters only, had no jurisdiction to deal with the question at all.

Held: That the Court had jurisdiction to hear the appeal.

That the fact that the agreement did not contain a provision that the solicitor so employed might continue the bankruptcy proceedings to the end did not make such agreement unfair or unreasonable, and that the order of the County Court Judge setting aside such agreement must be reversed. *In re Owen, Ex parte Peyton,* 2 Morrell, 87; 52 L. T. 628—D.

——On August 20th, 1885, in accordance with a resolution passed at a meeting of creditors, the debtor executed a deed of assignment vesting his estate in a trustee for their benefit. On October 28th, 1885, a bankruptcy petition was presented against the debtor, the act of bankruptcy alleged being the execution of the deed of assignment. On October 31st, 1885, the trustee under the deed paid out of assets in his hands the sum of 20*l.* 7*s.* 8*d.* to a firm of solicitors, being the amount of their bill of costs incurred in connection with the meeting of creditors and in preparing the deed of assignment, and also in collecting certain book debts. On January 20th, 1886, a receiving order was made against the debtor, and the trustee under the deed sent to the official receiver the balance of assets in his hands, after deducting the amount so paid to the solicitors, together with an account of receipts and payments in connection with the estate. The trustee appointed in the bankruptcy applied for an order for payment of the 20*l.* 7*s.* 8*d.*

Held: That the application must be granted, but that certain items

for collecting book debts, amounting together to 2*l.*, would under the circumstances be allowed, and an order made for payment of 18*l.* 7*s.* 8*d.* *In re Forster, Ex parte Rawlings*, 4 Morrell, 292; 36 W. R. 144—Cave, J.

Taxation of Costs of.]—Where, in an ordinary taxation of the costs of the solicitor to the trustee in the bankruptcy, the amount of the solicitor's bill is reduced by more than one-sixth, there is no rule in the Court of Bankruptcy that such solicitor shall pay the costs of the taxation. The provisions of the Attorneys and Solicitors Act (6 & 7 Vict. c. 73) do not apply in an ordinary reference to tax such costs, but the taxation is regulated by the practice of the Court of Bankruptcy. *In re Marsh, Ex parte Marsh*, 2 Morrell, 232; L. R. 15 Q. B. D. 340; 54 L. J. Q. B. 557; 53 L. T. 418—C. A.

Costs as between solicitor and client.]—The Court by three orders gave costs "as between party and party." Subsequently an application was made that such costs might be "as between solicitor and client;" which application was refused.

Held (on appeal):—That the application ought to have been made to the Court at the time when the costs were awarded; and that the words of Rule 98 of the Bankruptcy Rules, 1883—"the Court in awarding costs"—mean at the time when the Court makes the order. *In re Angell, Ex parte Shoolbred*, 2 Morrell, 5; L. R. 14 Q. B. D. 298; 54 L. J. Q. B. 87; 51 L. T. 678; 33 W. R. 202—C. A.

——Where a form of order by consent in a motion contained an agreement by one of the parties—the trustee in the bankruptcy—to pay the costs of the other "as between solicitor and client."

Held: That such a form of order could not be approved by the Court. *In re Guy, Ex parte Scantlebury*, 4 Morrell, 300—Cave, J.

Money paid to by bankrupt.]—On the presentation of a bankruptcy petition against a debtor, and an order for the appointment of an interim receiver having been made, such debtor instructed his solicitor to oppose the petition, and to move to rescind the interim order, and then paid to such solicitor at his request 25*l.* on account of costs of counsel's fees, and other expenses for that purpose. The application to rescind the interim order was dismissed, and the debtor was subsequently adjudicated bankrupt. The trustee in the bankruptcy thereupon claimed the 25*l.* from the solicitor as money received by him from the debtor with knowledge of the act of bankruptcy, on which the receiving order was made.

Held: That the application of the trustee must be refused; that it

'as right that a debtor should have legal assistance and advice against a ankruptcy petition; and that a debtor would be left practically defence- ɔss if money paid to a solicitor for services rendered on such an occasion ɔuld afterwards be recovered by the trustee. *In re Sinclair, Ex parte 'ayne*, 2 Morrell, 255; L. R. 15 Q. B. D. 616; 53 L. T. 767—Cave, J.

——Where the solicitor of the petitioning creditor, as his agent, had ɔceived from the debtor between the date of the act of bankruptcy and ıe adjudication various sums of money in consideration of several djournments of the hearing of the petition, such solicitor was personally able to refund such money to the trustee in the bankruptcy, even hough it had been paid over or accounted for by such solicitor to the etitioning creditor before the date of the order of adjudication. *In re 'hapman, Ex parte Edwards*, 1 Morrell, 238; L. R. 13 Q. B. D. 747; 1 L. T. 881; 33 W. R. 268—C. A.

SPECIAL MANAGER.

The power of appointing a special manager given by section 12 of ıe Bankruptcy Act, 1883, to the official receiver is entirely a discre- ionary power; and the Court has no authority to interfere to compel an fficial receiver who refuses to make such appointment. *In re Frederick 'hitaker*, 1 Morrell, 36; 50 L. T. 510—Cave, J.

SPECULATION.

Rash and Hazardous.]—The term "rash and hazardous speculations" ı section 28, sub-section 3 (d), of the Bankruptcy Act, 1883, is not onfined to rash and hazardous speculations in trade, but the term also ıcludes other speculations of a rash and hazardous nature, such as ambling, betting, and Stock Exchange transactions. *In re Barlow, Ex arte Thornber*, 3 Morrell, 304—C. A.

——In a case where a debtor within the space of about eighteen months ıad allowed a debt due to him from a person whom he knew to be in ɔecuniary difficulties to increase from 32,000*l.* to more than 60,000*l.*, nd it appeared that to the amount of 11,000*l.* this increase was due to ccommodation bills, and such debtor subsequently stopped payment, nd presented a bankruptcy petition, and a composition was accepted by he creditors.

Held: That the debtor had been guilty of rash and hazardous specu- ations; and that, even if the composition were reasonable, the Court ɔught to refuse its approval. *In re Rogers, Ex parte Rogers*, 1 Morrell, 59; L. R. 13 Q. B. D. 438; 33 W. R. 354—D.

——In a case where a debtor, as the managing director of a mining company, the mines being undeveloped, advanced both his own and borrowed money to the company, which subsequently became insolvent, and a petition in bankruptcy was presented against the debtor, and a composition accepted by his creditors.

Held: That the debtor had been guilty of rash and hazardous speculations; and that the Registrar was quite right in refusing to approve the composition offered. *In re Young, Ex parte Young*, 2 Morrell, 37—C. A.

——Where the bankrupt, who was a solicitor without capital, entered into heavy building speculations on borrowed money, to which speculations his insolvency was attributable.

Held: That the bankrupt had been guilty of rash and hazardous speculations: and that the order of the Registrar refusing an absolute discharge was a right order. *In re Salaman, Ex parte Salaman*, 2 Morrell, 61; L. R. 14 Q. B. D. 936; 54 L. J. Q. B. 238; 52 L. T. 378—C. A.

STAY OF PROCEEDINGS.

In Chancery Division.]—When receivers, appointed in an action for dissolution of partnership, are discharged by order of the Judge in Bankruptcy, their office is to determine from the date of the order by which they are discharged. The remuneration of such receivers shall be assessed by the Registrar. *In re Parker & Parker, Ex parte the Official Receiver*, 1 Morrell, 39—Cave, J.

——Where application was made by a bankrupt who had failed to pay over certain trust moneys in accordance with an order of the Chancery Division for an order restraining further proceedings on a motion for attachment.

Held: That the application must be refused. If the application had been made by the trustee in the bankruptcy for the benefit of the creditors, there might be some grounds for the Court to interfere. *In re Mackintosh & Beauchamp, Ex parte Mackintosh*, 1 Morrell, 84; L. R. 13 Q. B. D. 235; 51 L. T. 208; 33 W. R. 140—Cave, J.

On Creditors' Petition on Death of Debtor.]—Where a debtor against whom a creditors' petition in bankruptcy has been presented dies before service of the petition upon him, there is no power under section 108 of the Bankruptcy Act, 1883, or the Bankruptcy Rules, to dispense with service, or to order substituted service of the petition, and the bankruptcy proceedings must necessarily be stayed. *In re Easy, Ex parte*

Hill & Hymans, 4 Morrell, 281; L. R. 19 Q. B. D. 538; 56 L. J. Q. B. 624; 35 W. R. 819—C. A.

Consent of Creditors—Discretion of Registrar.]—The Registrar, before rescinding the appointment of a receiver, or granting a stay of proceedings, is not bound to be satisfied that the consent of all the creditors has been obtained; but he must exercise his discretion as to the sufficiency of the consent obtained in each case. Pending such rescission or stay of proceedings, the debtor should not, even with the consent of the petitioning creditors, be left in unfettered control of the estate; but a stay of the advertisement by the receiver may properly be granted. *In re Carr, Ex parte Carr*, 35 W. R. 150—C. A.

Where an appeal pending from a Judgment on which a Bankruptcy notice is founded—Discretion.]—Where a bankruptcy petition is presented by a creditor founded on an act of bankruptcy committed by the failure of the debtor to comply with the terms of a bankruptcy notice to pay a judgment debt, and an appeal is pending from such judgment, it is a matter of discretion for the Registrar whether he will make a receiving order, or stay the proceedings, and the Court of Appeal will not interfere unless such exercise of discretion is clearly wrong. *In re Rhodes, Ex parte Heyworth*, 1 Morrell, 269; L. R. 14 Q. B. D. 49; 54 L. J. Q. B. 198; 52 L. T. 201—C. A.

STOPPAGE IN TRANSITU.

A firm of merchants in London, acting as agents for a merchant at Oporto, bought from the applicants certain barrels of cement, which was stated to be wanted for the New York market. At the time of the purchase the vendors were informed that the cement in question was to be shipped in a vessel lying in the West India Docks about to be purchased on behalf of the principal abroad, and they were afterwards instructed to send the cement alongside such vessel, which was done. Mate's receipts for the cement were given to the vendors, and handed by them to the London firm, who gave all necessary directions to the master of the ship and took bills of lading making the cement deliverable at New York to their order. The firm of merchants in London subsequently became bankrupt, and the vendors thereupon claimed to exercise the right of stoppage *in transitu* over the cement, which had not then arrived at New York.

Held: That an actual delivery to the firm of merchants in London had taken place; that when in possession of the mate's receipts there was nothing as between that firm and the applicants to prevent bills of lading being taken for another port and a fresh destination impressed upon the

goods; and that the goods having got into the possession of the vendees in such a way that they could have altered their destination, the *transitus* was at an end. *In re Bruno, Silva & Son, Ex parte Francis & Co.*, 4 Morrell, 146—Cave, J.

SURETY.

Payment to.]—On application by the trustee to declare void, on the ground of fraudulent preference, an assignment of certain patent rights and also the payment of a sum of money made by the debtor within three months of a bankruptcy petition being presented against him, to his uncle who had guaranteed the payment of a debt due from such debtor to another person, the objection was raised that the payment now sought to be set aside had been made in consequence of the guarantee and not "in favour of any creditor."

Held: That the assignment was clearly a fraudulent preference; and that, on the facts of the case, the uncle of the debtor at the time of the payment of the said money to him being independently of the guarantee, a creditor for goods sold, such payment was also void under the section.

Quære: Whether if a debtor, within the time limited by the section, makes a payment to a person who has guaranteed a debt due from him to a third party, and which the surety has not then paid, such transaction can be set aside as being a payment made in favour of "any creditor" within section 48 of the Bankruptcy Act, 1883. *In re Bear, Ex parte Official Receiver*, 3 Morrell, 129—Cave, J.

SUSPENSION OF PAYMENT.—See *Act of Bankruptcy.*

TAXATION.—See *Costs—Solicitor.*

TIME.—See *Delay—Appeal—Proof—Disclaimer—Act of Bankruptcy.*

"TRADE OR BUSINESS."—See *Reputed Ownership.*

TRANSFER OF PROCEEDINGS.

Of Action pending in another Division.]—When application is made under section 102, sub-section 4, of the Bankruptcy Act, 1883, for the transfer of an action pending in another Division of the High Court, some proof must be afforded that advantage is likely to be derived by reason of such transfer to the Judge in bankruptcy.

Quære: Whether in a case where a receiving order has been made, but the debtor has not been adjudicated a bankrupt, the Court has any jurisdiction under section 102, sub-section 4, of the Bankruptcy Act,

1883, to make an order to transfer. *In re White & Co., Ex parte the Official Receiver*, 1 Morrell, 77—Cave, J.

Under section 125 for Administration of Deceased Debtor's Estate.]—Where an order has been made under sub-section (4) of section 125 of the Bankruptcy Act, 1883, transferring proceedings for the administration of a deceased debtor's estate from the Chancery Division of the High Court to the Court exercising jurisdiction in bankruptcy, the latter Court may make an administration order on an *ex parte* application by a creditor. But such order cannot be made until the expiration of two months from the date of the grant of probate or of letters of administration, unless either the legal personal representative of the deceased debtor consents thereto, or unless such debtor has committed an act of bankruptcy within three months prior to his decease. *In re J. A. May, Ex parte E. May*, 1 Morrell, 232; L. R. 13 Q. B. D. 552—D.

——Where a testator, having previously carried on business in England, was for more than six months previous to his death an inmate of a lunatic asylum in Scotland, and died insolvent and an administration action was commenced by a creditor; on motion on behalf of the plaintiff.

Held: That the Court had jurisdiction under section 125, sub-section (4) of the Bankruptcy Act, 1883, to make an order transferring the proceedings to the County Court within the jurisdiction of which the testator formerly carried on his business. *Senhouse* v. *Mawson*, 52 L. T. 745—V.-C. B.

——The power given by section 125 of the Bankruptcy Act, 1883, to transfer the proceedings in an action brought for the administration of an insolvent estate to the Court of Bankruptcy, is a discretionary one, and it will not be exercised where the estate is small, the number of creditors is small, and considerable expense has been already incurred in Chambers in the proceedings under an administration judgment. *Semble*, that an application for transfer can only be made by a creditor who has absolutely proved his debt. *In re Weaver, Higgs* v. *Weaver*, L. R. 29 Ch. Div. 236; 54 L. J. Ch. 749; 52 L. T. 512; 33 W. R. 874—Pearson, J.

From County Court to High Court or vice versâ—Parties to be Served.]—Where an application is made to transfer the proceedings in a bankruptcy from a County Court to the High Court, or from the High Court to a County Court, notice of such application must be served upon the official receiver. *In re Jack*, 4 Morrell, 150; L. R. 18 Q. B. D. 682; 35 W. R. 735—Cave, J.

From County Court.]—Where the Judge of a County Court refused to grant a certificate under Rule 16 of the Bankruptcy Rules, 1883, that "in his opinion a bankruptcy proceeding would be more advantageously conducted in some other Court," such refusal was held to be equivalent to an order to retain the proceedings, and from it an appeal would lie. If the Court to which the appeal was made was of opinion that such certificate ought to have been granted, it would not refer the matter back to the County Court, but would grant the certificate itself. *In re Walker, Ex parte Soanes*, 1 Morrell, 193; L. R. 13 Q. B. D. 484—D. And compare now Rules 18 to 26 of the Bankruptcy Rules, 1886.

In Lieu of Committal.]—Where the Judge of a County Court, not having jurisdiction in bankruptcy, at the hearing of a judgment summons for a committal, was of opinion that a receiving order should be made in lieu of a committal, and ordered the matter to be transferred to the Bankruptcy Court under Rule 268 (1) (a), of the Bankruptcy Rules, 1885 (see Rule 359, Bankruptcy Rules, 1886) it was held that notice of the subsequent proceedings under the order of transfer must be served on the judgment debtor. The Court of Bankruptcy in such a case is not bound to adopt the opinion of the County Court Judge, and to make a receiving order as a matter of course, but must exercise its own judicial discretion at the hearing. *In re Andrews, Ex parte Andrews*, 2 Morrell, 244; L. R. 15 Q. B. D. 335; 54 L. J. Q. B. 572—Cave, J.

On Bankruptcy of Partners.]—On February 4th, 1886, a receiving order was made against one partner in the High Court; and on February 6th, 1886, the other partner presented a petition in a County Court. On an application by the partner, against whom a receiving order had been made in the High Court for an order to transfer the proceedings in the County Court against the other partner to the High Court.

Held: That the application for transfer ought to be made to the County Court.

That in any event the application was one which ought to have been made to the Registrar, and not to the Judge in Court. *In re Nicholson, Ex parte Nicholson*, 3 Morrell, 46—Cave, J.

Where Receiving Order made under Section 103.]—On the hearing of a judgment summons in the County Court, a receiving order was made against the debtor under section 103, sub-section (5), of the Bankruptcy Act, 1883, and the proceedings were thereupon transferred under Rule 360 (1) of the Bankruptcy Rules, 1886, to the London Bankruptcy Court, as being the Court to which a bankruptcy petition against the debtor would properly be presented. The debtor paid the debt, and appealed to the Divisional Court in Bankruptcy to rescind the receiving order.

Held: That under the circumstances the proper course for the debtor to pursue was to apply to the County Court Judge for a rehearing. *In re Hughes, Ex parte Hughes*, 4 Morrell, 73—D.

TRUSTEE.

Approval of.—The fact that a trustee has been proposed by the brother of the bankrupt; and that such trustee has previously voted in favour of a composition and scheme of arrangement of the debtor's affairs; and that no committee of inspection is appointed, will not justify the Board of Trade in objecting to the appointment of such trustee under section 21, sub-section (2), of the Bankruptcy Act, 1883, even though the majority in number of the creditors are desirous that such objection should be made. *In re George Games, Ex parte the Board of Trade*, 1 Morrell, 216—Cave, J.

Application by, for directions.]—Where a trustee in a liquidation applied to the County Court for directions as to the acceptance of an offer for the purchase of the debtors' property, and notice was given to the debtors, but at the hearing of the application the County Court Judge refused to hear the solicitor for the debtors or to receive evidence on their behalf.

Held: That notice having been given to the debtors they ought to have been heard; and that an appeal lay from such refusal of the County Court Judge to do so.

Quære: Whether when a trustee applies to the Court for directions in any particular matter the debtor is in any event entitled to appear and be heard. *In re Webb & Sons, Ex parte Webb & Sons*, 4 Morrell, 52—Cave, J.

Conduct of.]—On August 4th, 1886, the agent on behalf of a banking company took possession of a quarry under a sub-lease previously granted by the debtor, the original lessee, as security for a loan. On August 11th, 1886, the debtor was adjudged bankrupt, and such agent was appointed trustee in the bankruptcy, but he nevertheless continued in possession of the said quarry on the part of the bank, which was worked for the bank's benefit. On November 6th, 1886, the agent, as trustee in the bankruptcy, applied to the County Court for unconditional leave to disclaim the lease. This application was opposed by the landlord, and refused by the County Court Judge, but without prejudice to the trustee to apply for leave to disclaim on terms.

Held: That the County Court Judge was right in refusing unconditional leave to disclaim: that the trustee had taken upon himself two utterly irreconcilable duties: and that, having regard to his conduct,

and to the fact that no evidence was before the County Court Judge to enable him to come to a proper conclusion as to terms, the order made by him was right. *In re Crowther, Ex parte Duff*, 4 Morrell, 100—D.

Costs of.]—See *Costs*.

Criminal proceedings against.]—Where after the annulment of bankruptcy proceedings, application was made by the bankrupt for an order against the trustee to deliver up books and papers and a statement of account, the said trustee, with the solicitors and committee of inspection, having been indicted by the bankrupt for conspiracy in bringing about the bankruptcy with intent to defraud, which indictment was then pending.

Held: That in the face of the criminal proceedings the application could not then be allowed; and that the proper course under the circumstances was to order the case to stand over until after the trial upon the indictment had taken place, or until his abandonment. *In re Palmer, Ex parte Palmer*, 3 Morrell, 267—C. A.

Disobedience of to order of Board of Trade.]—Although a trustee under a scheme of arrangement has been removed from office, the Board of Trade has power to demand a statement of his receipts and payments as such trustee, and to apply to the Court under section 102, sub-section (5), of the Bankruptcy Act, 1883, to enforce that order in case of neglect and refusal to comply with it. *In re Rogers, Ex parte the Board of Trade*, 4 Morrell, 67; 35 W. R. 457—Cave, J.

——Where no estate has come into the hands of a trustee under a scheme of arrangement, such trustee must himself provide the stamp necessary to be affixed to the affidavit of no receipts required to be forwarded to the Board of Trade under Rule 291 of the Bankruptcy Rules, 1886. In such case an unstamped affidavit cannot be accepted, nor the amount necessary for the said stamp provided from the Bankruptcy Estates' Account. *In re Rowlands, Ex parte the Board of Trade*, 4 Morrell, 70; 35 W. R. 457—Cave, J.

Duty of on appeal.]—Where, in a case of any legal difficulty, a trustee in a bankruptcy has obtained the decision of the Court, if such trustee appeals from the decision given and does not succeed, the order for costs will be made against him personally. A trustee, therefore, before appealing from such decision, ought to obtain the consent of the creditors to do so, and also to obtain a guarantee from such creditors for his own protection in the event of the appeal being decided against him. *In re*

Malden, Gibson & Co., Ex parte James, 3 Morrell, 185; 55 L. T. 708—D.

Motion to declare rights of.]—When a trustee in a bankruptcy is of opinion that a motion to declare his rights should not be made and a creditor desires the motion to be made, the proper course is to make a preliminary motion to the Court for leave to use the name of the trustee on giving him an indemnity. *In re Genese, Ex parte Kearsley & Co.*, 3 Morrell, 57; L. R. 17 Q. B. D. 1; 55 L. J. Q. B. 325; 34 W. R. 474—Cave, J.

Action by—New Trustee appointed.]—When a trustee in bankruptcy suing in his official name is removed, and a new trustee appointed, the new trustee must obtain an order to continue the action and give notice thereof to the other parties under Order XVII., Rules 4 and 5. *Pooley's Trustee* v. *Whetham*, L. R. 28 Ch. Div. 38; 54 L. J. Ch. 182; 51 L. T. 608; 33 W. R. 423—C. A.

Relation back of Title of—Payment of Bankrupt's Money to procure withdrawal of Criminal Prosecution.]—Where money belonging to a debtor was paid to procure the withdrawal of a criminal prosecution against him, and the debtor was subsequently adjudged bankrupt under a petition founded on an act of bankruptcy of which the party to whom the money was paid at the time of receiving it had notice.

Held: That the consideration for which the money was paid was illegal; and that the trustee in the bankruptcy was entitled to recover it. *In re Campbell, Ex parte Wolverhampton and Staffordshire Banking Co.*, 1 Morrell, 261; L. R. 14 Q. B. D. 32; 33 W. R. 642—D.

Under Scheme of Arrangement.]—*Held:* That the term "trustee" in section 27 of the Bankruptcy Act, 1883, which provides that the Court may, on the application of the official receiver or trustee, at any time after a receiving order has been made against a debtor, summon before it persons for the purpose of discovery of the debtor's property, does not include a trustee under a scheme of arrangement of a debtor's affairs accepted by the creditors and approved by the Court under section 18 of the Act. *In re Grant, Ex parte Whinney*, 3 Morrell, 118; L. R. 17 Q. B. D. 238; 55 L. J. Q. B. 369; 54 L. T. 632; 34 W. R. 539—C. A.

See also *Disclaimer—Sale—Official Receiver—Proof—Petition—Costs—Board of Trade.*

VESTING ORDER.

In the case of *In re Parker & Parker, Ex parte Turquand*, 1 Morrell, 275; L. R. 14 Q. B. D. 405; 51 L. T. 667; 33 W. R. 752, a doubt was expressed by Cave, J., whether, on a disclaimer of leaseholds by a trustee in bankruptcy under section 55, sub-section (6), of the Bankruptcy Act, 1883, the landlord had such an interest in the "disclaimed property" as to be entitled to a vesting order under the sub-section.

It was further held, that where in such a case a mortgagee does not appear on the trustee's application to disclaim, the proper course is to order that the mortgagee be excluded from all interest in and security upon the property unless he shall, by a short date, declare his option to take a vesting order in the terms of the sub-section.

And see now the case of *In re Cock, Ex parte Shilson*, 36 W. R. 187, where leave having been given to the trustee in a bankruptcy to disclaim the bankrupt's interest in certain leases, it was ordered, on the application of the landlord, that unless the executor of a mortgagee by sub-demise of the bankrupt's interest should within seven days elect to accept an order vesting in him the disclaimed property, subject to the same liabilities and obligations as the bankrupt was subject to under the leases, he should be excluded from all interest in and security upon the property.

Held: That the Court had power to make the order on the application of the landlord; and that, subject to a formal amendment, the order made was right.—D.

VIVA VOCE EVIDENCE.—See *Evidence.*

VOLUNTARY SETTLEMENT.—See *Settlement.*

WAGES.—See *Preferential Claim.*

WIFE.—See *Married Woman—Proof.*

WITNESS.

Examination of—Refusal to Answer—Tendency to Criminate.]—Where a question is in form an innocent one, it is not a sufficient ground of refusal to answer for a witness to say that he believes his answer to such question will or may criminate him: but he must satisfy the Court that there is a reasonable probability that it would or might do so. A witness in such a case must satisfy the Court by some fact outside the question that his answer will or may put him in jeopardy. *In re Genese, Ex parte Gilbert*, 3 Morrell, 223—C. A.

Power to Summon—Scheme of Arrangement.]—The term "trustee" in section 27 of the Bankruptcy Act, 1883, which provides that the Court may, on the application of the official receiver or trustee, at any time after a receiving order has been made against a debtor, summon before it persons for the purpose of discovery of the debtor's property, does not include a trustee under a scheme of arrangement of the debtor's affairs accepted by the creditors and approved by the Court under section 18 of the Act. *In re Grant, Ex parte Whinney,* 3 Morrell, 118; L. R. 17 Q. B. D. 238; 55 L. J. Q. B. 369; 54 L. T. 632; 34 W. R. 539—C. A.

Under Section 125—*Insolvent Estate.*]—Where an order of commitment was made against the widow and son of a deceased debtor, whose estate was being administered in bankruptcy under the provisions of section 125 of the Bankruptcy Act, 1883, on the ground that they had refused to comply with an order of the County Court, directing them to attend for the purpose of being examined with regard to the estate of such deceased debtor under section 27 of the Act.

Held: That section 27 of the Bankruptcy Act, 1883, does not apply to section 125 of the Act; that the powers under Order XXXVII., Rule 5, of the Supreme Court Rules, 1883, as to the examination of witnesses, only exist where some litigation is in progress; and that the Rule 58 of the Bankruptcy Rules, 1883, did not give any such power as was sought for in the present case. *In re Hewitt, Ex parte Hewitt,* 2 Morrell, 184; L. R. 15 Q. B. D. 159; 54 L. J. Q. B. 402; 53 L. T. 156—D.

Refusal of, to produce Letter-book.]—A witness was examined before the Registrar under section 27 of the Bankruptcy Act, 1883, and produced certain letters torn from a letter-book in his possession, but refused to produce the book itself, as he swore that it contained no letters relating to the debtor, his dealings or his property, other than those produced. On an application being made to commit the witness under Rule 88 of the Bankruptcy Rules, 1886.

Held: That the answer of the witness must be accepted, as the object of the section was not to enable a trustee by cross-examination to make out a case. *In re Purvis, Ex parte Rooke,* 56 L. T. 579—Cave, J.

And see also cases under title *Discovery.*

THE END.

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